APPENDIX A
TO
PETITION FOR WRIT OF CERTIORARI

Order and Judgment of the United States Court of Appeals for the Tenth Circuit

Bellinsky v. Galán, Nos. 24-1351 & 24-1352

(Tenth Cir., July 22, 2025)

FILED
United States Court of Appeals
Tenth Circuit

July 22, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JACOB BELLINSKY,

Plaintiff - Appellant,

v.

RACHEL ZINNA GALAN, individually; STEVEN JAMES LAZAR, individually; ANDREW NEWTON HART, individually; TERRI MEREDITH, individually; RYAN LOEWER, individually; BRYCE DAVID ALLEN, individually; JEFFREY RALPH PILKINGTON, individually; BRIAN D. BOATRIGHT, individually; STATE OF COLORADO, corporately,

Defendants - Appellees.

No. 24-1351
(D.C. No. 1:23-CV-03163-PAB-STV)
(D. Colo.)

JACOB BELLINSKY,

Plaintiff - Appellant,

v.

RACHEL ZINNA GALAN, individually; STEVEN JAMES LAZAR, individually; ANDREW NEWTON HART, individually; JOHN EVAN KELLNER, individually; EVA ELAINE WILSON, individually; RAIF EDWIN TAYLOR, individually; GINA PARKER, individually;

No. 24-1352
(D.C. No. 1:23-CV-03461-PAB)
(D. Colo.)

APPENDIX A

GARY MICHAEL KRAMER, individually; PALMER L. BOYETTE, individually; THERESA MICHELLE SLADE, individually; MICHELLE ANN AMICO, individually; BRIAN DALE BOATRIGHT, individually; STATE OF COLORADO, corporately,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BACHARACH**, and **FEDERICO**, Circuit Judges.

Rabbi Jacob Bellinsky appeals from the dismissals of two actions. We reverse and remand for further proceedings.

Procedural Background

Rabbi Bellinsky and his wife, Ms. Rachel Galan, had eight children. The couple divorced, and Rabbi Bellinsky allegedly obtained custody of six of the children. But Ms. Galan and her attorney (Mr. Andrew Hart)

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* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

later filed a domestic relations case in Gilpin County, Colorado, to alter custody.

In 2022, two criminal cases were filed against Rabbi Bellinsky in the District Court of Elbert County, Colorado. One of the cases went to trial, and Rabbi Bellinsky was convicted of violating a protection order. The other criminal case was dismissed.

The Federal Claims

In late 2023, Rabbi Bellinsky filed two federal court actions for money damages, asserting claims under

- 42 U.S.C. §§ 1981, 1983, 1985, and 1986 and
- Colorado law.

Rabbi Bellinsky brought the first action, Civil Action No. 23-CV-3163, against Ms. Galan, her fiancé (Mr. Steven Lazar), her attorney (Mr. Hart), the Gilpin County Clerk, three Colorado state court judges, and the State of Colorado. In this action, Rabbi Bellinsky alleged that

- Ms. Galan, Mr. Lazar, and Mr. Hart had conspired "to kidnap the [couple's] minor children from [Rabbi Bellinsky's] primary care under 'color' of 'family law,'" Case No. 24-1351, R. vol. 1 at 14, and
- Mr. Hart had "orchestrat[ed] an enormous 'color of law' 'crime spree' against [Rabbi Bellinsky] and his children" in order to "destroy [Rabbi Bellinsky's] family for profit," "kidnap [the] six . . . minor children . . . from his near-full-time care," "forever sever [Rabbi Bellinsky's] loving bonds with" all eight children, "enslave [Rabbi Bellinsky] . . . in [Mr. Hart's] child support and maintenance rackets," "criminalize [Rabbi Bellinsky] as the 'defendant' of ongoing false

> accusations and forever enslave him in the criminal justice system," and "cover up their crimes against [Rabbi Bellinsky] and his family," *Id.* at 14–15.

According to the complaint, the state judge and the court clerk aided Mr. Hart while the two other judges did nothing to stop the scheme.

Rabbi Bellinsky brought the second action, Civil Action No. 23-CV-3461, against Ms. Galan; Mr. Lazar; Mr. Hart; one of the state court judges named in the first action; the State of Colorado; the clerk of the court for Elbert County, Colorado; and three prosecutors and four judges involved in the criminal proceedings. In this action, Rabbi Bellinsky claimed that

- Mr. Hart had instructed Ms. Galan and Mr. Lazar "to fraudulently pursue and obtain a void protection order in Elbert County," Case No. 24-1352, R. at 19–20,
- the judges had issued fraudulent orders, and
- Mr. Hart had instructed Ms. Galan to falsely report violations of those orders.

According to the complaint, those reports

- resulted in false charges against Rabbi Bellinsky and his imprisonment and
- led to weaponization of the judges and prosecutors to pursue "known-false charges in known-void cases under 'color' of law," *id.* at 27.

The defendants moved (1) to dismiss the complaints and (2) stay discovery in both cases pending the resolution of the motions to dismiss. The magistrate judge granted the motions to stay discovery and recommended abstention under *Younger v. Harris*, 401 U.S. 37 (1971), to

the extent the state domestic relations case or the state criminal proceedings remained pending. To the extent that these cases had ended, the magistrate judge recommended dismissal on the ground that the district court would lack jurisdiction under the *Rooker-Feldman* doctrine. *See Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923). Rabbi Bellinsky objected to these recommendations.

He also objected to the stay, arguing that the magistrate judge should have addressed whether the Office of the Attorney General for the State of Colorado could represent individual state employees (who had been sued only in their individual capacities). In addition, Rabbi Bellinsky moved for recusal of the magistrate judge and the district judge. The district judge overruled Rabbi Bellinsky's objections to the stay and denied his motion for recusal.

On the issue of abstention, the district judge overruled Rabbi Bellinsky's objections to the magistrate judge's recommendations, concluding that both the domestic relations case and one of the criminal cases had been pending in Colorado when Rabbi Bellinsky filed the federal cases.[1] The district court thus concluded that

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[1] The district court took judicial notice of the state-court docket in both cases, noting that "[t]he state court docket" for *People v. Bellinsky*, No. 2022M143 (Colo. Dist. Ct. 2022) "show[ed] that Rabbi Bellinsky's [criminal] trial took place" from "January 2 to January 4, 2024," that

- both were "the type of cases that *Younger* abstention encompasses," Case No. 24-1352, R. at 971–72,
- there was "no reason why Rabbi Bellinsky's federal claims could not be given fully adequate consideration in the state courts," *Id.* at 975 (internal quotation marks omitted), and
- both state cases implicated important state interests.

The district judge thus agreed with the magistrate judge on the need to abstain under *Younger, id.* at 978; Case No. 23-1351, R. vol. 2 at 137, and concluded that the *Rooker-Feldman* doctrine

- did not apply to Rabbi Bellinsky's first federal case because that case implicated only the domestic relations case, which was ongoing when Rabbi Bellinsky filed the first case and
- did apply to Rabbi Bellinsky's second federal case to the extent that any of the claims in that case had implicated state-court judgments that became final.

Based on these conclusions, the district judge granted the motions to dismiss.

Recusal

We first address the denial of Rabbi Bellinsky's motion to recuse. He argued that both the district judge and the magistrate judge had "aid[ed] the Defendants in their ongoing 'Relocation Crime Spree,'" "intentionally

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"Rabbi Bellinsky [had been] sentenced on April 8, 2024, and that Rabbi Bellinsky [had] filed an appeal on April 15, 2024." Case No. 24-1352, R. at 973. The district court further noted that "the state court docket" in the domestic relations case had shown three orders granting motions to relocate the minor children and modify the decision-making and parenting plan. *Id.*

neglected their duties to [Rabbi Bellinsky's] suffering family for over six months in obvious aid to the Defendants/suspects," violated federal criminal law by concealing their knowledge of "felony" and "treason," and failed to take any action on Rabbi Bellinsky's demands for a special grand jury investigation into defendants' conduct. Case No. 24-1351, R. vol. 2 at 25–26; *see* p. 3, above. But the district court concluded that Rabbi Bellinsky had not shown a need to recuse.

On the issue of recusal, we apply the abuse-of-discretion standard. *See Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228, 1239 (10th Cir. 2020). District judges and magistrate judges must recuse whenever their impartiality might reasonably be questioned. *Id.* So "we ask whether a reasonable person, fully informed of the relevant facts, would question the judge's impartiality." *Id.* (internal quotation marks omitted). The statutory standard is objective, and the inquiry involves outward manifestations and reasonable inferences. *United States v. Woodmore*, 135 F.4th 861, 874 (10th Cir. 2025). Under the objective test, the court considers whether a reasonable factual basis exists for questioning the judges' impartiality. *Id.*

We conclude that the district judge did not abuse his discretion in denying Rabbi Bellinsky's motion. Nothing in the record suggests that the judges were helping the defendants or concealing their misconduct. To the contrary, Rabbi Bellinsky was complaining about the manner in which the

judges were handling the cases. These complaints didn't require recusal because "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Representation of Individual Defendants

Rabbi Bellinsky also argues that the Office of the Attorney General for the State of Colorado couldn't represent the state employees when sued in their individual capacities. On this issue, we conduct de novo review of the district court's interpretation of state law. *Jordan v. Maxim Healthcare Servs., Inc.*, 950 F.3d 724, 730 (10th Cir. 2020).

We conclude that the district court did not err. Colorado law entitles state employees to representation by the Attorney General when sued in their individual capacities if the claim arises out of their official duties. Colo. Stat. Rev. § 24-31-101(m). Rabbi Bellinsky cites no authority that would call into question the applicability of this statute.

Younger abstention and the *Rooker-Feldman doctrine*

Rabbi Bellinsky also challenges the district court's rulings on the doctrines involving *Younger* and *Rooker-Feldman*. For these rulings, we conduct de novo review. *Miller v. Deutsche Bank Nat'l Tr. Co. (In re Miller)*, 666 F.3d 1255, 1260 (10th Cir. 2012) (discussing the *Rooker-Feldman* doctrine); *Brown ex rel. Brown v. Day*, 555 F.3d 882, 887 (10th Cir. 2009) (discussing *Younger* abstention).

The *Younger* doctrine "provides that a federal court must abstain from deciding a case otherwise within the scope of its jurisdiction in 'certain instances in which the prospect of undue interference with state proceedings counsels against federal relief.'" *Elna Sefcovic, LLC v. TEP Rocky Mtn., LLC*, 953 F.3d 660, 669-70 (10th Cir. 2020) (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013)). Notably, the Supreme Court has limited the application of *Younger* to three categories of cases: (1) criminal prosecutions; (2) certain "civil enforcement proceedings;" and (3) "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 368 (1989). We refer to these as the "*Sprint* categories" because the Supreme Court's opinion in *Sprint* said that *Younger* abstention does not extend beyond these categories. *Sprint*, 571 U.S. at 78.

"If and only if the state court proceeding falls within one of the" *Sprint* categories "*may* courts analyze the propriety of abstention under the so-called *Middlesex* conditions." *Travelers Cas. Ins. Co. of Am. v. A-Quality Auto Sales, Inc.*, 98 F.4th 1307, 1317 (10th Cir. 2024); *see Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 433–35 (1982). "Those conditions ask whether there is (1) an ongoing state judicial . . . proceeding, (2) the presence of an important state interest, and (3) an adequate opportunity to raise federal claims in the state

proceedings." *Travelers*, 98 F.4th at 1317 (internal quotation marks omitted).

"The *Rooker-Feldman* doctrine precludes a losing party in state court who complains of injury caused by the state-court judgment from bringing a case seeking review and rejection of that judgment in federal court." *In re Miller*, 666 F.3d at 1261. "The doctrine is tied to Congress's decision to vest federal appellate jurisdiction over state court judgments exclusively in the United States Supreme Court." *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 514 (10th Cir. 2023). The doctrine applies only if the claim specifically seeks to modify or set aside a state-court judgment. *Id.* at 515.

Case No. 24-1351 is Rabbi Bellinsky's appeal from the district court's final judgment in the first federal action. As noted, the district court dismissed that entire action based on *Younger* abstention. This dismissal was erroneous.

The district court applied *Younger* abstention, relying on our unpublished opinion in *Morkel v. Davis*, 513 F. App'x 724 (10th Cir. 2013) (unpublished). The plaintiff in *Morkel* had sued under 42 U.S.C. §§ 1983 and 1985, alleging that "the judge, special master, and guardian ad litem . . . , along with two attorneys representing her former husband . . . , conspired to deprive her of her constitutional rights in a Utah divorce and child custody case." *Id.* at 726. The district court in *Morkel* determined that "application of the *Rooker-Feldman* and *Younger* doctrines [had]

prevented [it] from exercising subject-matter jurisdiction over the claims." *Id.* We concluded on appeal that the *Rooker-Feldman* doctrine did not apply because "the state-court proceedings were ongoing when [the plaintiff] brought suit in federal court." *Id.* at 727. But we agreed that *Younger* abstention applied. In doing so, we referred to the *Middlesex* conditions and stated "that federal district courts must abstain from exercising jurisdiction when three conditions are satisfied: (1) there are ongoing state proceedings; (2) the state court offers an adequate forum to hear the plaintiff's claims from the federal lawsuit; and (3) the state proceeding involves important state interests." *Id.* So we concluded that all three *Younger* requirements "had been met." *Id.* With respect to the third of the requirements, we noted that "the resolution of child custody matters has been acknowledged as an important state interest." *Id.* at 729.

But "[t]he district court's reliance on *Morkel*" was misguided based on the Supreme Court's later opinion in *Sprint*. *Covington v. Humphries*, No. 24-1158, 2025 WL 1448661, at *5 n.10 (10th Cir. May 19, 2025) (unpublished). "After *Sprint*, *Younger* could still apply to a state domestic relations case, but only if the circumstances fall into a *Sprint* category." *Id.* And the district court in this case, like the district court in *Covington*, failed to consider whether the underlying domestic relations case had fallen into a *Sprint* category.

We therefore conclude that the district court erred by failing to determine whether the underlying domestic relations case had fallen into a *Sprint* category. If the case didn't fall into a *Sprint* category, the district court would need to consider the remaining arguments asserted in the defendants' motions to dismiss.

Case No. 24-1352 is Rabbi Bellinsky's appeal from the final judgment in the second federal action. The district court dismissed that action in part on the basis of *Younger* abstention and the *Rooker-Feldman* doctrine.

We conclude the district court erred in applying *Younger* abstention on the basis of the underlying domestic relations case. As in the first federal action, the district court failed to consider whether the circumstances of the underlying domestic relations case had fallen into a *Sprint* category.

The defendants also argue that if any of the state-court judgments, had become final, Mr. Bellinsky's claims would trigger the *Rooker-Feldman* doctrine. The district court agreed with the defendants, but we do not because (1) Rabbi Bellinsky wasn't subject to any adverse judgments in state court when he sued in federal court and (2) he isn't challenging the state-court judgments.

When Rabbi Bellinsky sued in federal court, proceedings were pending in the domestic relations case and the first state criminal case. The

only state case that had been completed was the second criminal case. But the state district court had dismissed that case before Rabbi Bellinsky sued in federal court. So there was no adverse judgment that had become final in state court.

In the federal complaint, Mr. Bellinsky sought money damages, but he did not seek to modify or set aside a state-court judgment. *See Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995) (concluding that a civil rights claim, which alleged a massive conspiracy between lawyers and judges, did not trigger the *Rooker-Feldman* doctrine because the plaintiff had sought damages based on corruption of the state judicial process (rather than modification or vacatur of a state-court judgment)); *see also Riehm Engelking*, 538 F.3d 952, 965 (8th Cir. 2008) (concluding that the *Rooker-Feldman* doctrine didn't apply because the parent sought redress for the loss of custody rather than relief from a judgment in an underlying domestic-relations case). The *Rooker-Feldman* doctrine thus does not apply.

Disposition

We reverse the judgments in both appeals and remand both cases to the district court for further proceedings consistent with this order.

We grant Rabbi Bellinsky's motions to proceed in forma pauperis on appeal.

We deny all of Rabbi Bellinsky's other motions.

Entered for the Court

Robert E. Bacharach
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

July 22, 2025

Jacob Bellinsky
C/O 7661 McLaughlin Road, PMB 283
Falcon, CO 80831

RE: 24-1351, 24-1352, Bellinsky v. Galan, et al
Dist/Ag docket: 1:23-CV-03163-PAB-STV

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Allison R Ailer
Martin J. Champagne
Rachel Zinna Galan
Steven James Lazar
John F Peters
Elizabeth Lauren Phillips
Andrew David Ringel

CMW/jjh

APPENDIX B
TO
PETITION FOR WRIT OF CERTIORARI

Order of the United States Court of Appeals for the Tenth Circuit

Denying Petition for Panel Rehearing and Rehearing En Banc

Bellinsky v. Galán, Nos. 24-1351 & 24-1352

(Tenth Cir., August 11, 2025)

FILED
United States Court of Appeals
Tenth Circuit

August 11, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JACOB BELLINSKY,

Plaintiff - Appellant,

v.

RACHEL ZINNA GALAN, individually, et al.,

Defendants - Appellees.

Nos. 24-1351 & 24-1352
(D.C. No. 1:23-CV-03163-PAB-STV &
1:23-CV-03461-PAB)
(D. Colo.)

ORDER

Before **TYMKOVICH**, **BACHARACH**, and **FEDERICO**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Appellant's motion to publish is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Civil Case No. 23-cv-03163-PAB-STV

JACOB BELLINSKY,

Plaintiff,

v.

RACHEL ZINNA GALAN, individually,
STEVEN JAMES LAZAR, individually,
ANDREW NEWTON HART, individually,
TERRI MEREDITH, individually,
RYAN PAUL LOEWER, individually,
BRYCE DAVID ALLEN, individually,
JEFFREY RALPH PILKINGTON, individually,
BRIAN DALE BOATRIGHT, individually, and
STATE OF COLORADO, corporately,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge [Docket No. 75].

I. BACKGROUND

The facts are set forth in the magistrate judge's recommendation, Docket No. 75 at 2-4, and the Court adopts them for purposes of ruling on the objections. To the extent that plaintiff Jacob Bellinsky disputes how the magistrate judge construed certain facts, the Court considers and resolves those arguments below.

On November 30, 2023, Mr. Bellinsky filed this case asserting various constitutional claims under 42 U.S.C. §§ 1981, 1983, 1985, and 1986, as well as a state

APPENDIX C

filed a timely objection on April 30, 2024. Docket No. 77. The state defendants filed a response to Mr. Bellinsky's objection. Docket No. 80.

II. LEGAL STANDARD

The Court must "determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). An objection is "proper" if it is both timely and specific. *United States v. One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996) ("*One Parcel*"). A specific objection "enables the district judge to focus attention on those issues – factual and legal – that are at the heart of the parties' dispute." *Id.*

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. *See Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."). The Court therefore reviews the non-objected to portions of a recommendation to confirm there is "no clear error on the face of the record." Fed. R. Civ. P. 72(b), Advisory Committee Notes. This standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review. Fed. R. Civ. P. 72(b). Because Mr. Bellinsky is proceeding *pro se*, the Court will construe his objections and pleadings liberally without serving as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

III. ANALYSIS

The Court construes Mr. Bellinsky's filing as raising six objections. *See* Docket No. 77 at 2-14.

A. Objection One

First, Mr. Bellinsky objects to Judge Varholak's "'known-void' recommendation on the ground that it is automatically void by operation of law for lack of jurisdiction and authority, as VARHOLAK, and BRIMMER, were long-ago required by law to disqualify themselves" for any one of the reasons stated in Mr. Bellinsky's complaint, recusal motions, and prior objections. *Id.* at 2-3 (citing Docket Nos. 1, 2, 3, 57-1, 67, 71) (footnotes omitted). This Court and Judge Varholak previously ruled on Mr. Bellinsky's recusal motions and objections, finding that Mr. Bellinsky raised no valid grounds for recusal under 28 U.S.C. § 455. *See* Docket Nos. 69, 70, 72, 73, 74.[2] Mr. Bellinsky does not raise any new recusal arguments in his objection that differ from his previous motions. Accordingly, the Court overrules Mr. Bellinsky's first objection as moot.

B. Objection Two

Mr. Bellinsky's second objection states that he

> objects to the apparent weaponization of magistrate VARHOLAK's rogue court, and of chief judge PHILIP A. BRIMMER's rogue court—both being knowingly and treasonously operated without authority and jurisdiction—against Father, as

[2] On May 9, 2024, Mr. Bellinsky filed two notices stating that all orders in this case, including the recusal orders, are "void by operation of law." Docket Nos. 78, 79. Mr. Bellinsky cannot unilaterally render a court order "void." *See Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, No. 09-cv-00970-PAB-KMT, 2014 WL 4057118, at *3 (D. Colo. Aug. 14, 2014) (noting that a judicial opinion "may not be expunged by private agreement" (quoting *Okla. Radio Assocs. v. F.D.I.C.*, 3 F.3d 1436, 1444 (10th Cir. 1993))); *see also* Fed. R. Civ. P. 60(b) (discussing how "*the court* may relieve a party . . . from a final judgment, order, or proceeding" (emphasis added)). Accordingly, the Court declines to consider Mr. Bellinsky's two notices.

> demonstrated by their wholesale deprivation of Father's rights to due process (*e.g.*, to their recusals, to denials of all Motions to Dismiss for *any* one of the defendants' frauds upon the court or *any* one of their crimes, to sanctions against the defendants/suspects, et cetera, as repeatedly demanded by Father), of other "due" relief in this case (*e.g.*, to initiation of federal crime victim services for Father, to referral for criminal investigation and prosecution of the defendants/suspects, etc., as repeatedly demanded by Father), and now of federal redress itself—a blatant federal crime in direct violation of Father's 1st Amendment rights—as demonstrated by VARHOLAK's 04/16/24 recommendation to grant all of the Defendants' known-grossly-fraudulent, known-conspiratorial and otherwise known-criminal Motions to Dismiss and thus terminate Father's case.

Docket No. 77 at 2 (footnotes omitted).[3] Mr. Bellinsky's second objection does not identify any specific findings of fact or application of the law that were incorrect in Judge Varholak's recommendation. Accordingly, Mr. Bellinsky's second objection is insufficient. *See Jones v. United States*, No. 22-cv-02854-PAB-MDB, 2024 WL 358098, at *3 (D. Colo. Jan. 31, 2024) ("Objections disputing the correctness of the magistrate's recommendation, but failing to specify the findings believed to be in error are too

[3] Mr. Bellinsky's objection also states that he incorporates by reference plaintiff's "04/16/24 Notice of Termination of Jurisdiction & Authority." Docket No. 77 at 2 (citing Docket No. 76). In the notice, Mr. Bellinsky states that, because the judges have refused to recuse themselves from the case, Mr. Bellinsky "hereby officially *terminates* the respective jurisdiction and authority of BRIMMER and VARHOLAK to hear or preside over any further matters in this case, in case 1:23-cv-03461, and in all of Father's future federal actions." Docket No. 76 at 4, ¶ 12. Mr. Bellinsky provides no legal authority, and the Court is unaware of any authority, suggesting that a litigant has the unilateral ability to "terminate" a specific judge's assignment to a case. Accordingly, the Court rejects this argument. Furthermore, Mr. Bellinsky's notice cursorily states that he demands the "immediate recusals of both BRIMMER and VARHOLAK." *Id.*, ¶ 14. However, Mr. Bellinsky did not file a motion requesting the recusal of either judge. *See* D.C.COLO.LCivR 7.1(d) (noting that a "motion shall be filed as a separate document"). Mr. Bellinsky is aware that he needs to file a motion in order to request the recusal of a judge, evidenced by the fact that he has filed several motions to recuse in this case. *See* Docket Nos. 67, 71. Accordingly, the Court declines to consider this cursory argument in Mr. Bellinsky's notice.

general and therefore insufficient." (quoting *Stamtec, Inc. v. Anson*, 296 F. App'x 518, 520 (6th Cir. 2008) (unpublished))).

To the extent that Mr. Bellinsky objects to Judge Varholak's purported failure to refer this case for criminal investigation or prosecution, the Court overrules that objection. As the Court has previously explained in several of Mr. Bellinsky's cases,

> "[I]t is well-settled that a private citizen does not have a constitutional right to bring a criminal complaint against another individual." *Maehr v. United States*, No. 18 cv-02273-PAB-NRN, 2019 WL 3940931, at *1 (D. Colo. Aug. 21, 2019) (quoting *Price v. Hasly*, 2004 WL 1305744, at *2 (W.D.N.Y. June 8, 2004) (citing *Leeke v. Timmerman*, 454 U.S. 83 (1981)); *Keyter v. 535 Members of 110th Cong.*, 277 F. App'x 825, 827 (10th Cir. 2008) (unpublished) ("a private citizen[ ] has no standing to initiate federal criminal prosecutions")).

Docket No. 69 at 3 (quoting *Galan v. Bellinsky*, No. 23-cv-01799-PAB, 2023 WL 8075634, at *4-5 (D. Colo. Nov. 21, 2023)). The "United States and its attorneys have the sole power to prosecute criminal cases in the federal courts." Docket No. 72 at 5-6 (quoting *Maine v. Taylor*, 477 U.S. 131, 136 (1986)). "The commencement of a federal criminal case by submission of evidence to a grand jury is 'an executive function within the exclusive prerogative of the Attorney General.'" *Id.* at 6 (quoting *Maehr*, 2019 WL 3940931, at *2). "Nowhere in the Constitution or in the federal statutes has the judicial branch been given power to monitor executive investigations before a case or controversy arises." *Id.* (quoting *Maehr*, 2019 WL 3940931, at *2). Mr. Bellinsky provides no authority suggesting that a federal judge has the duty or authority to refer cases for criminal investigation or prosecution. As a result, the Court overrules Mr. Bellinsky's second objection.

C. Objection Three

Mr. Bellinsky's third objection argues that Judge Varholak "fraudulently" states in the introductory paragraph of his recommendation that "[t]his Court has carefully considered the Motions and related briefing, the entire case file and the applicable case law." Docket No. 77 at 5 (quoting Docket No. 75 at 1). Mr. Bellinsky argues that Judge Varholak did not "carefully" consider any of Mr. Bellinsky's documents, claims, arguments, or case law citations, but only considered the defendants "known-fraudulent arguments" and cases. *Id.*

Mr. Bellinsky's third objection is not specific because it provides no explanation why the factual and legal conclusions in the recommendation are erroneous. *See One Parcel*, 73 F.3d at 1059 (discussing how a specific objection "enables the district judge to focus attention on those issues – factual and legal – that are at the heart of the parties' dispute"). Mr. Bellinsky does not identify any specific arguments or case law in his responses that Judge Varholak purportedly failed to consider. Accordingly, the Court overrules Mr. Bellinsky's third objection. *See Jones*, 2024 WL 358098, at *3; *see also Barnes v. Omnicell*, 2024 WL 2744761, at *4 (10th Cir. May 28, 2024) (affirming district court's conclusion that plaintiff's "objections were not sufficiently specific to focus the district court's attention on the legal and factual issues because he failed to identify the parts of the recommendation that contained the alleged lies").

D. Objection Four

Mr. Bellinsky's fourth objection raises several disputes with Judge Varholak's factual findings in the background section of the recommendation. Docket No. 77 at 5-

6. First, Mr. Bellinsky argues that Judge Varholak "fraudulently" states that "[t]his action arises out of Plaintiff's domestic relations case, Case No. 2015DR7, pending in the Gilpin County District Court." *Id.* at 5 (quoting Docket No. 75 at 2). Mr. Bellinsky claims that he does not have a "pending" domestic relations case. *Id.* Mr. Bellinsky states that Mr. Hart, Ms. Galan, and Mr. Lazar "fraudulently reopened" Mr. Bellinsky and Ms. Galan's "divorce case (2015DR7) in 2019 to carry out a conspiracy and diabolical plot to parentally kidnap the minor children from [Mr. Bellinsky's] primary care." *Id.* at 5-6 (footnote omitted). Mr. Bellinsky appears to argue that he is not a party to the "known-void" domestic relations proceeding in Case No. 2015DR7 in the District Court for Gilpin County, Colorado because he "withdrew his consent" as the respondent in March 2022 when "he realized, after spending nearly $200,000 on an attorney, that he was not being heard at all, his case was being purposefully churned for profit, his evidence was being suppressed, his claims and counterclaims were not being considered, and case 15DR7 was being 'fixed' against him." *Id.* at 6, 8. The Court finds that Judge Varholak correctly concluded that Mr. Bellinsky is a party to Case No. 2015DR7, a domestic relations case in the Gilpin County District Court. *See In re: Marriage of Bellinsky*, Case No. 2015DR7.[4] The state court docket shows that Mr. Bellinsky is the "respondent" in the case and lists his status as "active." *Id.* In fact, Mr. Bellinsky filed a motion in that case as recent as March 25, 2024 and has filed other documents in the case as recent as

[4] The Court takes judicial notice of the state court docket in Case No. 2015DR7. *See Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006) (holding that a court may take judicial notice of facts which are a matter of public record when considering a motion to dismiss); *Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1298 n.2 (10th Cir. 2014) (noting that a court may "take judicial notice of documents and docket materials filed in other courts").

August 12, 2024. *See id.* Mr. Bellinsky's argument that he is not a party because the domestic relations proceeding is "void," *see* Docket No. 77 at 6, 8, is without merit. Accordingly, the Court overrules this portion of the objection.

Next, Mr. Bellinsky argues that Judge Varholak "fraudulently presents several half-truths," including "repeatedly referring to the 'State Proceeding' and to 'hearings' therein as if valid knowing that Father repeatedly referred to the 'void case 15DR7' and 'known-void relocation proceeding' and 'known-void hearings' therein." *Id.* at 6. Mr. Bellinsky's allegations that Case No. 2015DR7 and the related hearings are "void" is conclusory. A court does not need to accept conclusory allegations in a complaint as true when ruling on a motion to dismiss. *Moffett v. Halliburton Energy Servs., Inc.*, 291 F.3d 1227, 1231 (10th Cir. 2002). The Court therefore overrules this portion of the objection.

Finally, Mr. Bellinsky appears to argue that Judge Varholak omitted several facts in the recommendation's background section. Docket No. 77 at 6. Mr. Bellinsky argues that, because the state defendants are being sued in their individual capacities, the state defendants are "'stripped' of official immunity and other privileges and must retain their own *private* counsel or represent themselves." *Id.* Mr. Bellinsky insists that the state defendants are "treasonously represented by" the "rogue" Attorney General's Office, which is "stealing *public* funds and resources for *private* matters." *Id.* As the Court previously explained in another order in this case, "it is common for the government to represent state or local employees sued in their individual capacities."

Docket No. 73 at 11 (collecting cases). Accordingly, the Court overrules this portion of the objection.

E. Objection Five

Mr. Bellinsky's fifth objection argues that the magistrate judge erred in concluding that *Younger* abstention applies to this case. Docket No. 77 at 7-11. The *Younger* abstention doctrine provides that "a federal court must abstain from deciding a case otherwise within the scope of its jurisdiction in 'certain instances in which the prospect of undue interference with state proceedings counsels against federal relief.'" *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 522 (10th Cir. 2023) (quoting *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 953 F.3d 660, 669 (10th Cir. 2020) (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013))); *see also Younger*, 401 U.S. at 41-43. *Younger* abstention applies to three categories of state cases: state criminal prosecutions, civil enforcement proceedings, and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Graff*, 65 F.4th at 522 (citation omitted). Under *Younger*, a federal court must abstain if the following three conditions are satisfied: (1) the relevant state court proceeding is "ongoing;" (2) the state forum provides an adequate opportunity to raise the federal claims; and (3) an important state interest is present. *Id.* at 523.

Younger abstention applies in most circumstances "without regard to the relief requested." *Id.*; *see also D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004) (noting that the "*Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-

court proceeding"). Moreover, *Younger* abstention is not discretionary and, if abstention applies, a court must dismiss the claim without prejudice. *D.L.*, 392 F.3d at 1228; *see also Graff*, 65 F.4th at 523 n.32 (discussing how a court should dismiss claims without prejudice under *Younger* abstention, but noting that it is unclear in the Tenth Circuit whether "*Younger* abstention implicates federal courts' subject matter jurisdiction").

To the extent that the state domestic relations proceeding remains "open and pending," Judge Varholak recommends that the Court abstain pursuant to *Younger*. Docket No. 75 at 7. Judge Varholak found that Mr. Bellinsky is a party to a domestic relations case in Gilpin County and that, at the time Mr. Bellinsky filed his federal complaint, there was a pending motion in the state case and a hearing scheduled for January 30, 2024. *Id.* (citing Docket No. 1 at 10, ¶ 56; Docket No. 27-1). Judge Varholak noted that the "the Complaint's reference to a 'relocation crime spree' in the State Proceedings, which 'continues unabated to this day' [Docket No. 1 at 11, ¶ 63], and Plaintiff's request that we 'halt 1st Judicial District case #2015DR7 and 18th Judicial District case #22M143' [*Id.* at 22, ¶ 88] indicate that the parties are still litigating the state case." Docket No. 75 at 7. Accordingly, Judge Varholak found that the first *Younger* requirement was satisfied. *Id.* Moreover, Judge Varholak found that the second and third *Younger* requirements were met because the state court provides an adequate forum for raising Mr. Bellinsky's federal claims and "divorce and child welfare are family law matters that implicate important state court interests from which federal courts generally should abstain." *Id.* at 8-9 (collecting cases). Accordingly, Judge

Varholak recommends dismissing plaintiff's claims without prejudice under the *Younger* abstention doctrine. *Id.* at 11.

Mr. Bellinsky argues that *Younger* abstention is not applicable because none of the three requirements are satisfied. Docket No. 77 at 8. Mr. Bellinsky appears to argue that the first *Younger* requirement is not satisfied because the state court proceedings are not "legitimate" and he is not a "party" to the defendants' "known-void 'relocation' proceeding in the known-void 'domestic relations case in Gilpin County District Court." *Id.* at 7-8. With no citation to the record, Mr. Bellinsky claims that he "long-ago" exhausted "all state appellate remedies," evidenced by the fact that he is suing Justice Boatright and Chief Judge Pilkington. *Id.* at 7. Furthermore, Mr. Bellinsky argues that Judge Varholak "fraudulently" states that the complaint requests that the federal court halt Case No. 2015DR7, when the complaint in fact states that the State of Colorado should halt the case. *Id.* at 8-9. As to the second *Younger* requirement, Mr. Bellinsky argues that Colorado state courts are "extremely corrupt," are "fixing" cases and engaging in "governmental racketeering," have never listened to Mr. Bellinsky, and do not follow federal or state law "at all." *Id.* at 9. As to the third *Younger* requirement, Mr. Bellinsky asserts that his complaint does not request "federal adjudication" of any divorce, child custody, or other family law matters. *Id.* at 10.

The Court finds that Judge Varholak correctly concluded that *Younger* abstention applies in this case. The Tenth Circuit has "consistently applied *Younger* to child custody cases." *Morkel v. Davis*, 513 F. App'x 724, 728 (10th Cir. 2013) (unpublished) (collecting cases). Mr. Bellinsky's complaint states that this case "arises" from and

"seeks relief from" the "void" proceedings in Case No. 2015DR7, where Ms. Galan filed a motion to relocate the children, an amended parenting plan, and a motion to change decision-making. Docket No. 1 at 6-7, ¶¶ 40, 42. Mr. Bellinsky alleges that Ms. Galan, Mr. Lazar, and Mr. Hart conspired to "kidnap" plaintiff's children. *Id.* at 4, ¶ 28. Mr. Belinsky alleges that the state defendants "fixed" every proceeding and hearing to facilitate the "known-diabolical plan." *Id.* at 5, ¶ 31. Accordingly, the Court finds that Mr. Bellinsky's domestic relations case in state court constitutes a civil proceeding involving certain orders that are "uniquely in furtherance of the state courts' ability to perform their judicial functions." *See Graff*, 65 F.4th at 522 (citation omitted); *see also Morkel*, 513 F. App'x at 728 (noting that child custody cases implicate *Younger*); *Thompson v. Romeo*, 728 F. App'x 796, 798 (10th Cir. 2018) (unpublished) (finding that a federal action under 42 U.S.C. § 1983 against several judges was subject to *Younger* abstention); *Bryant v. McLean*, No. 23-cv-00997-NYW-KAS, 2024 WL 1195326, at *6 (D. Colo. Mar. 20, 2024) (accepting the magistrate judge's conclusion that cases adjudicating child custody are clearly within the category of cases that "are uniquely in furtherance of the state courts' ability to perform their judicial functions").

The Tenth Circuit has held that the first prong of the *Younger* abstention analysis, whether there is an "ongoing" state judicial proceeding, is determined based on the time "when the federal action was filed." *Dauwe v. Miller*, 364 F. App'x 435, 437 (10th Cir. 2010) (unpublished) (citing *Bear v. Patton*, 451 F.3d 639, 642 (10th Cir. 2006); *Bettencourt v. Bd. of Registration in Med.*, 904 F.2d 772, 777 (1st Cir.1990)); *see also Morkel*, 513 F. App'x at 727-28; *Egbune v. Baum*, No. 23-cv-02830-PAB, 2024 WL

1374905, at *4 (D. Colo. Apr. 1, 2024). "State proceedings end, and are therefore no longer ongoing, when a lower state court issues a judgment and the losing party allows the time for appeal to expire." *Egbune*, 2024 WL 1374905, at *4 (citing *Bear*, 451 F.3d at 642). Mr. Bellinsky filed this case on November 30, 2023. Docket No. 1. The complaint alleges that Judge Allen scheduled a hearing on a child custody "relocation" matter in Case No. 2015DR7 for January 30, 2024. *Id.* at 10, ¶ 56; *see also* Docket No. 27-1. The state court docket shows that Judge Allen issued three orders on February 9, 2024 granting the motions to relocate the minor children and modify the decision-making and parenting plan. *See In re: Marriage of Bellinsky*, Case No. 2015DR7.[5] Because Case No. 2015DR7 was ongoing at the time that Mr. Bellinsky filed this case, the Court finds that the first prong of the *Younger* abstention analysis is satisfied. *See Dauwe,* 364 F. App'x at 437; *Morkel*, 513 F. App'x at 726-27 (finding that the first *Younger* requirement was satisfied because the state child proceedings were ongoing when plaintiff filed her federal lawsuit under 42 U.S.C. §§ 1983 and 1985).

The Court next considers the second prong of the *Younger* abstention analysis, whether the state forum provides an adequate opportunity to raise the relevant federal claims. Mr. Bellinsky has the burden of establishing that state law prevents him from presenting his federal claims in the state proceedings. *See Morkel*, 513 F. App'x at 728-29 (citing *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1292 (10th Cir. 1999)). The Tenth Circuit has held that, "unless state law clearly bars the interposition of the federal

[5] Moreover, the Colorado Court of Appeals' docket indicates that on March 1, 2024, Mr. Bellinsky filed an appeal in Case No. 2015DR7. *See In re: Marriage of Bellinsky*, Case No. 2024CA355. The docket indicates that the Colorado Court of Appeals has not yet issued a ruling on the appeal. *See id.*

statutory and constitutional claims, a plaintiff typically has an adequate opportunity to raise federal claims in state court." *Winn v. Cook*, 945 F.3d 1253, 1258 (10th Cir. 2019) (internal quotations and citation omitted); *see also Morkel*, 513 F. App'x at 728 ("State courts are generally equally capable of enforcing federal constitutional rights as federal courts."). The Court finds that the second *Younger* requirement is satisfied because "Colorado law does not bar federal constitutional claims." *See Dauwe*, 364 F. App'x at 437 (quoting *Crown Point I, L.L.C. v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003)) (internal alterations omitted). Mr. Bellinsky provides no support for his conclusory assertion that Colorado state courts are "extremely corrupt," are "fixing" cases and engaging in "governmental racketeering," have never listened to Mr. Bellinsky, and do not follow federal or state law "at all." *See* Docket No. 77 at 9. The Court finds that there is no reason why Mr. Bellinsky's federal claims "could not be given fully adequate consideration in the state courts." *See Dauwe*, 364 F. App'x at 437; *see also Winn*, 945 F.3d at 1258 ("*Younger* requires only the availability of an *adequate* state-court forum, not a favorable result in the state forum"). Accordingly, the second prong of the *Younger* abstention analysis is satisfied.

Finally, the Court considers the third prong of the *Younger* abstention analysis, whether an important state interest is present. The "resolution of child custody matters" is "an important state interest." *See Morkel*, 513 F. App'x at 729 (noting that "comity considerations of the *Younger* doctrine are particularly vital in child custody proceedings, which are an especially delicate subject of state policy" (citation and internal quotations omitted)); *see also Thompson*, 728 F. App'x at 798 (holding that

state child custody proceedings implicate important state interests because "[t]he whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States" (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 692 (1992))); *Wideman v. Colorado*, 242 F. App'x 611, 614 (10th Cir. 2007) (unpublished) (finding that it was "beyond dispute" that child custody proceedings "implicate important state interests"). Mr. Bellinsky's complaint in this case "seeks relief from" the defendants' actions in Case No. 2015DR7, a domestic relations proceeding in Gilpin County District Court involving child custody issues. *See* Docket No. 1 at 6, ¶ 40. Mr. Bellinsky alleges that the defendants have "deprived" Mr. Bellinsky's rights to "primary custody of his minor children." *Id.* at 12-14, ¶¶ 68, 70. The Court rejects Mr. Bellinsky's argument that his complaint does not request "federal adjudication" of any divorce, child custody, or other family law matters. *See* Docket No. 77 at 10. Despite the fact that Mr. Bellinsky's claims are "put forward in constitutional terms, . . . cloaking an attack on a state court judgment in this way does not forestall application of . . . *Younger*." *See Dauwe*, 364 F. App'x at 437; *see also Bryant*, 2024 WL 1195326, at *6 (rejecting plaintiff's argument that his federal claims do not "stem from his state court child custody proceedings" because plaintiff's claims "raise allegations about, and assert injuries arising out of, various acts in the state court proceedings" and holding that plaintiff's "attempt to reframe" his claims does not bar application of *Younger*). As a result, the third *Younger* requirement is satisfied.

Because all three *Younger* requirements are met, the Court finds that the magistrate judge properly recommended dismissing this case without prejudice under

the *Younger* abstention doctrine. *See Thompson*, 728 F. App'x at 798 (holding that the district court properly applied *Younger* abstention to dismiss claims arising from allegedly unconstitutional orders entered in an ongoing state child custody proceeding). The Court therefore overrules Mr. Bellinsky's fifth objection.[6]

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[6] Mr. Bellinsky also objects to a footnote in the portion of the recommendation discussing the *Younger* abstention doctrine. *See* Docket No. 77 at 3-4. In the footnote, Judge Varholak states that

> In the Complaint and Responses to the Motions, Plaintiff appears to request injunctive relief as well, specifically requesting "a federal district court judge solely to oversee the administration of due process and to referee the trial by jury" in the state court. [# 1 at ¶ 25; *see also* ## 41 at 7; 42 at 9; 43 at 5; 46 at 11-12]. This is exactly the type of interference that Younger prevents. *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) (noting supervision and interruption of state court proceedings to adjudicate assertions of noncompliance would indirectly accomplish the kind of interference that *Younger* sought to prevent).

Docket No. 75 at 10 n.6. Mr. Bellinsky objects to Judge Varholak's use of the phrase "appears to" because a judge cannot make findings of fact from "appearances." Docket No. 77 at 4. Mr. Bellinsky also argues that Judge Varholak "fraudulently" added the phrase "in the state court" to this footnote to "make it appear as though [the] complaint seeks federal adjudication of state court matters." *Id.* The Court overrules this objection. Judge Varholak's use of the phrase "appears to" was not improper because he was liberally construing an unclear statement in the complaint. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (noting that a *pro se* plaintiff's "pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers" (citation omitted)); *Diversey v. Schmidly*, 738 F.3d 1196, 1199 (10th Cir. 2013) (noting that, if a court "can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, [it] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." (citation omitted)). Furthermore, even if the recommendation incorrectly concludes that Mr. Bellinsky appears to request injunctive relief, this footnote does not alter the rest of the *Younger* abstention analysis in the recommendation. Judge Varholak explained that "the *Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." Docket No. 75 at 10 (quoting *D.L.*, 392 F.3d at 1228). Judge Varholak found that the *Younger* doctrine would extend to plaintiff's request for compensatory and punitive damages because a judgment in this case that defendants' conduct was unconstitutional would enable Mr. Bellinsky to argue in the state court

F. Sixth Objection

Mr. Bellinsky's sixth objection argues that the magistrate judge erred in concluding that the *Rooker-Feldman* doctrine would apply because Mr. Bellinsky is not requesting that the federal court "reverse or otherwise undo the state court judgment." Docket No. 77 at 11-14. The "*Rooker-Feldman* doctrine prohibits a losing party in state court 'from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Morkel*, 513 F. App'x at 727 (quoting *Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011)). "This doctrine has a narrow scope, however, and applies only when a state court judgment is final." *Id.*

To the extent that the state proceedings are not ongoing, the magistrate judge alternatively recommends dismissing plaintiff's claims under the *Rooker-Feldman* doctrine. Docket No. 75 at 11-14. Because the Court finds that Case No. 2015DR7 was ongoing at the time this case was filed and that *Younger* abstention applies, the Court finds that the *Rooker-Feldman* doctrine is inapplicable. *See Morkel*, 513 F. App'x at 727 (noting that "*Rooker–Feldman* applies only when a federal court is asked to review the *final* decisions of a state court" and that, if the state court proceedings are

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proceedings that the child custody orders are "void as violative of Plaintiff's constitutional rights." *Id.* Mr. Bellinsky raises no specific objection to this portion of Judge Varholak's analysis. Judge Varholak correctly concluded that *Younger* abstention applies even if Mr. Bellinsky requests only monetary damages. *See D.L.*, 392 F.3d at 1228 (noting that the "*Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding"). Accordingly, the Court overrules Mr. Bellinsky's objection to footnote 6.

ongoing when plaintiff files the federal lawsuit, then *Rooker-Feldman* would not apply). Accordingly, the Court finds that plaintiff's sixth objection is moot.

G. Non-Objected to Portions of the Recommendation

The Court has reviewed the rest of the recommendation to satisfy itself that there are "no clear error[s] on the face of the record." *See* Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, the Court has concluded that the recommendation is a correct application of the facts and the law.

IV. CONCLUSION

Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge [Docket No. 75] is **ACCEPTED**. It is further

ORDERED that plaintiff's Objections to Magistrate's Known-Void Recommendation [Docket No. 77] are **OVERRULED**. It is further

ORDERED that the State Defendants' Motion to Dismiss [Docket No. 27] is **GRANTED in part**. It is further

ORDERED that defendant Andrew Newton Hart's Motion to Dismiss [Docket No. 30] is **GRANTED in part**. It is further

ORDERED that defendant Rachel Zinna Galan's Motion to Dismiss [Docket No. 38] is **GRANTED in part**. It is further

ORDERED that defendant Steven James Lazar's Motion to Dismiss [Docket No. 44] is **GRANTED in part**. It is further

ORDERED that plaintiff's claims against each defendant are **DISMISSED without prejudice**. It is further

ORDERED that this case is closed.

DATED August 22, 2024.

BY THE COURT:

PHILIP A. BRIMMER
Chief United States District Judge

APPENDIX D
TO
PETITION FOR WRIT OF CERTIORARI

Order Accepting Recommendation of Magistrate Judge and

Dismissing Action Without Prejudice

Bellinsky v. Galán, No. 1:23-cv-03461

(D. Colo. Aug. 22, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Civil Case No. 23-cv-03461-PAB-STV

JACOB BELLINSKY,

Plaintiff,

v.

RACHEL ZINNA GALAN, individually,
STEVEN JAMES LAZAR, individually,
ANDREW NEWTON HART, individually,
JOHN EVAN KELLNER, individually,
EVA ELAINE WILSON, individually,
RAIF EDWIN TAYLOR, individually,
GINA PARKER, individually,
GARY MICHAEL KRAMER, individually,
PALMER L. BOYETTE, individually,
THERESA MICHELLE SLADE, individually,
MICHELLE ANN AMICO, individually,
BRIAN DALE BOATRIGHT, individually, and
STATE OF COLORADO, corporately,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge [Docket No. 72].

I. BACKGROUND

The facts are set forth in the magistrate judge's recommendation, Docket No. 72 at 2-4, and the Court adopts them for purposes of ruling on the objections. To the extent that plaintiff Jacob Bellinsky disputes how the magistrate judge construed certain facts, the Court considers and resolves those arguments below.

APPENDIX D

On December 29, 2023, Mr. Bellinsky filed this case asserting various constitutional claims under 42 U.S.C. §§ 1981, 1983, 1985, and 1986, as well as a state law claim for intentional infliction of emotional distress. Docket No. 1 at 15-34, ¶¶ 87-124. On February 2, 2024, defendant Gina Parker, the Clerk of the Court for Elbert County, Colorado, filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Docket No. 20. On February 16, 2024, defendants Eva Elaine Wilson, John Evan Kellner, and Raif Edwin Taylor (collectively, the "district attorney defendants") filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Docket No. 40. On February 19, 2024, defendant Andrew Newton Hart filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Docket No. 42. On February 29, 2024, defendants State of Colorado, Judge Gary Michael Kramer, Judge Palmer Boyette, Judge Theresa Michelle Slade, Judge Michelle Ann Amico, and Justice Brian Dale Boatright (collectively, the "state defendants") filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Docket No. 45.[1] On March 4 and March 5, 2024, defendants Steven James Lazar and Rachel Zinna Galan, appearing *pro se*, each filed a motion to dismiss. Docket Nos. 47, 49. Mr. Bellinsky filed responses to the motions, *see* Docket Nos. 44, 54, 57, 58, 64, 65, and several defendants filed replies. Docket Nos. 56, 63, 66.

On May 1, 2024, Magistrate Judge Scott T. Varholak issued a recommendation to grant the motions to dismiss. Docket No. 72. Judge Varholak recommends

[1] When this case was filed, Justice Boatright was the Chief Justice of the Colorado Supreme Court. *See* Colorado Judicial Branch, Brian D. Boatright, https://www.coloradojudicial.gov/contact/brian-d-boatright (last accessed August 22, 2024).

dismissing Mr. Bellinsky's claims without prejudice because the *Younger* abstention doctrine applies to plaintiff's claims, *see Younger v. Harris*, 401 U.S. 37 (1971), or, in the alternative, the claims are barred under the *Rooker-Feldman* doctrine, *see Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Docket No. 72 at 7-17. The recommendation states that any objections must be filed within fourteen days after service on the parties. *Id.* at 17-18 n.8. Mr. Bellinsky filed a timely objection on May 15, 2024. Docket No. 76.[2] The district attorney defendants and the state defendants filed responses to Mr. Bellinsky's objection. Docket Nos. 77, 78. Mr. Bellinsky filed replies. Docket Nos. 79, 80.

II. LEGAL STANDARD

The Court must "determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). An objection is "proper" if it is both timely and specific. *United States v. One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996) ("*One Parcel*"). A specific objection "enables the district judge to focus attention on those issues – factual and legal – that are at the heart of the parties' dispute." *Id.*

[2] As a preliminary matter, the Court notes that Mr. Bellinsky's objection violates the Local Rules and the Court's Practice Standards. The Local Rules state that "[a]ll pleadings and documents shall be double spaced." D.C.COLO.LCivR 10.1(e). This Court's Practice Standards provide that "[a]ll motions, objections (including objections to the recommendations or orders of United States Magistrate Judges), responses, and briefs shall not exceed **fifteen pages**." Practice Standards (Civil Cases), Chief Judge Philip A. Brimmer, § III.A. Mr. Bellinsky's objection is 22 pages and is not double spaced. *See* Docket No. 76. The Court did not strike Mr. Bellinsky's objection. However, Mr. Bellinsky is reminded that any future filings must comply with the Local Rules and this Court's Practice Standards.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. *See Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."). The Court therefore reviews the non-objected to portions of a recommendation to confirm there is "no clear error on the face of the record." Fed. R. Civ. P. 72(b), Advisory Committee Notes. This standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review. Fed. R. Civ. P. 72(b). Because Mr. Bellinsky is proceeding *pro se*, the Court will construe his objections and pleadings liberally without serving as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

III. ANALYSIS

The Court construes Mr. Bellinsky's filing as raising six objections. *See* Docket No. 76 at 2-22.

A. Objection One

First, Mr. Bellinsky objects to Judge Varholak's "known-void" recommendation on the ground that "it is automatically void by operation of law for lack of jurisdiction and authority, as both VARHOLAK and chief judge PHILIP A. BRIMMER—the current *illegitimate* officers of the court—were long-ago required by law to disqualify themselves for *any one* of the reasons previously stated" in Mr. Bellinsky's other case, Case No. 23-

cv-03163-PAB-STV. Docket No. 76 at 2-3 & n.5 (footnotes omitted). This Court and Judge Varholak previously ruled on Mr. Bellinsky's recusal motions and objections, finding that Mr. Bellinsky raised no valid grounds for recusal under 28 U.S.C. § 455. *See Bellinsky v. Galan, et al.*, Case No. 23-cv-03163-PAB-STV, Docket Nos. 69, 70, 72, 73, 74. Mr. Bellinsky does not raise any new recusal arguments in his first objection that differ from his previous motions. Accordingly, the Court overrules Mr. Bellinsky's first objection as moot.[3]

B. Objection Two

Mr. Bellinsky's second objection insists that Judge Varholak is "brazenly attempting to 'fix' this second federal suit" against Mr. Bellinsky by "totally ignoring Father's very detailed refutation of each of the Defendant's known-grossly-fraudulent Motions to Dismiss." Docket No. 76 at 3. Mr. Bellinsky contends that Judge Varholak has spent "enormous amounts of federal funding and resources" to "research and cite VARHOLAK's own known-irrelevant case law in support of his own known-inapplicable grounds with respect to the Younger Abstention and Rooker-Feldman

[3] On April 18, 2024, Mr. Bellinsky filed a notice stating that he "terminates" the "respective authorities and jurisdictions" of Judge Brimmer and Judge Varholak to "hear or preside over any further matters in this case." Docket No. 70 at 2. On May 9, 2024, Mr. Bellinsky filed two notices stating that all orders in this case are "void by operation of law." Docket No. 74 at 1; Docket No. 75 at 1. Mr. Bellinsky cannot unilaterally render a court order "void." *See Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, No. 09-cv-00970-PAB-KMT, 2014 WL 4057118, at *3 (D. Colo. Aug. 14, 2014) (noting that a judicial opinion "may not be expunged by private agreement" (quoting *Okla. Radio Assocs. v. F.D.I.C.*, 3 F.3d 1436, 1444 (10th Cir. 1993))); *see also* Fed. R. Civ. P. 60(b) (discussing how "*the court* may relieve a party . . . from a final judgment, order, or proceeding" (emphasis added)). Furthermore, Mr. Bellinsky provides no legal authority, and the Court is unaware of any authority, suggesting that a litigant has the unilateral ability to "terminate" a specific judge's assignment to a case. Accordingly, the Court declines to consider Mr. Bellinsky's notices.

Doctrines in another outrageous attempt to have Father's suit dismissed." *Id.* Mr. Bellinsky

> objects to VARHOLAK's one-sided reliance on his own fraudulent and inapplicable precedents, without analyzing the cases and arguments Father raised, which clearly created a further appearance of partiality, heavy-handed bias, and uneven treatment of the parties – effectively representing the defendants as an 'advocate'. And notwithstanding VARHOLAK's lack of authority, failing to substantively address Father's cited authorities is a concerning departure from the court's duty to liberally construe pro se filings and hold them to less stringent standards. While VARHOLAK was free to conclude Father's cases were distinguishable, a fairer approach would have been to explain why his precedents didn't govern, rather than ignoring them altogether in favor of the court's own authorities supporting dismissal.

Id. at 7.[4]

Furthermore, Mr. Bellinsky argues that Judge Varholak "fraudulently" states in the introductory paragraph of the recommendation that "[t]his Court has carefully considered the Motions and related briefing, the entire case file and the applicable case law." *Id.* at 17 (quoting Docket No. 72 at 2). Mr. Bellinsky contends that Judge Varholak did not "carefully" consider any of Mr. Bellinsky's documents, claims, arguments, or case law citations, but only considered the defendants "known-fraudulent arguments" and cases. *Id.* Moreover, Mr. Bellinsky appears to argue that Judge Varholak is an "advocate" for the defendants because he is "ignoring the Defendants/suspects' continued 'crime sprees;'" is "allowing an open conspiracy against Father's rights between the Defendants/suspects in this case;" and is "covering up the conspiracies and other crimes." *Id.* at 7.

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[4] Mr. Bellinsky attaches three exhibits to his objection to purportedly "prove VARHOLAK's 'case fixing' attempt." Docket No. 76 at 4 (citing Docket Nos. 76-1, 76-2, 76-3).

The Court overrules Mr. Bellinsky's second objection. When a party raises a legal argument, the court has "an independent duty to research and properly apply the law." *Baylon v. Wells Fargo Bank, N.A.*, 303 F. Supp. 3d 1160, 1165 (D.N.M. 2018); *see also Ensey v. Ozzie's Pipeline Padder, Inc.*, 2010 WL 11523525, at *2 n.3 (D.N.M. Apr. 29, 2010) ("it is certainly the Court's job to research carefully the legal issues properly presented by the parties"). The Court therefore finds that Judge Varholak committed no error by conducting legal research on the various issues raised by defendants, including the *Younger* abstention and *Rooker-Feldman* doctrines. Mr. Bellinsky provides no legal authority, and the Court is unaware of any authority, suggesting that a magistrate judge is required to discuss every case that a *pro se* litigant cites and explain in detail why those cases are not on point in the recommendation.

To the extent that Mr. Bellinsky argues that Judge Varholak ignored Mr. Bellinsky's arguments and case law, the Court finds that this portion of the objection is not specific because it provides no explanation why the factual and legal conclusions in the recommendation are erroneous. *See One Parcel*, 73 F.3d at 1059 (discussing how a specific objection "enables the district judge to focus attention on those issues – factual and legal – that are at the heart of the parties' dispute"). Mr. Bellinsky does not identify any specific arguments or case law in his responses that Judge Varholak purportedly failed to consider. *See Jones v. United States*, No. 22-cv-02854-PAB-MDB, 2024 WL 358098, at *3 (D. Colo. Jan. 31, 2024) ("Objections disputing the correctness of the magistrate's recommendation, but failing to specify the findings believed to be in

error are too general and therefore insufficient." (quoting *Stamtec, Inc. v. Anson*, 296 F. App'x 518, 520 (6th Cir. 2008) (unpublished))); *see also Barnes v. Omnicell*, 2024 WL 2744761, at *4 (10th Cir. May 28, 2024) (affirming district court's conclusion that plaintiff's "objections were not sufficiently specific to focus the district court's attention on the legal and factual issues because he failed to identify the parts of the recommendation that contained the alleged lies").

To the extent that Mr. Bellinsky's second objection could be construed as raising a question about Judge Varholak's impartiality, the Court overrules this portion of the objection. As the Court has previously explained,

> Under 28 U.S.C. § 455(a), a federal judge is required to recuse himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "Section 455 establishes 'an objective standard: disqualification is appropriate only where the reasonable person, were he to know all the circumstances, would harbor doubts about the judge's impartiality.'" *United States v. Mobley*, 971 F.3d 1187, 1205 (10th Cir. 2020) (quoting *United States v. Wells*, 873 F.3d 1241, 1251 (10th Cir. 2017)). "In conducting this review, [the court] must ask how these facts would appear to a well-informed, thoughtful and objective observer, who is an average member of the public, not a hypersensitive, cynical, and suspicious person." *Id.* (internal quotations and citation omitted). "Though judges 'have a strong duty to recuse when appropriate,' they also have 'a strong duty to sit,' and § 455 must not be so broadly construed as to make recusal mandated 'upon the merest unsubstantiated suggestion of personal bias or prejudice.'" *Id.* (quoting *Wells*, 873 F.3d at 1251).
>
> "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994); *see also Lammle v. Ball Aerospace & Techs. Corp.*, 589 F. App'x 846, 849 (10th Cir. 2014) (unpublished) ("Unfavorable judicial rulings and ordinary efforts at courtroom administration are insufficient grounds for recusal."). Rather, recusal based on a judge's decisions, opinions, or remarks "is necessary when a judge's actions or comments 'reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.'" *United States v. Nickl*, 427 F.3d 1286, 1298 (10th Cir. 2005) (quoting *Liteky*, 510 U.S. at 555). Adverse rulings that do not

> evidence such favoritism or antagonism "are grounds for appeal, not recusal." *Id.* (citation omitted).

Bellinsky v. Galan, et al., No. 23-cv-03163-PAB-STV, 2024 WL 1330076, at *2 (D. Colo. Mar. 28, 2024). The recommendation, although adverse to Mr. Bellinsky, is insufficient alone to raise a question about Judge Varholak's impartiality. *See Liteky*, 510 U.S. at 555. Mr. Bellinsky identifies no portions of the recommendation that "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *See Nickl*, 427 F.3d at 1298. Mr. Bellinsky's suggestion that Judge Varholak is an "advocate" for the defendants and is "fixing" this case, *see* Docket No. 76 at 4, 7-8, are merely "unsubstantiated suggestion[s] of personal bias or prejudice." *See Mobley*, 971 F.3d at 1205. Mr. Bellinsky provides no facts in support of these arguments. As a result, the Court overrules Mr. Bellinsky's second objection.

C. Objection Three

Mr. Bellinsky's third objection appears to argue that Judge Varholak violated plaintiff's "due process rights" by failing to hold a hearing on the motions to dismiss. *See* Docket No. 76 at 4. Mr. Bellinsky contends that Judge Varholak knows that plaintiff "would insist on oral arguments (if he were dealing with legitimate federal judges) especially when the matters-at-hand are the first step in obtaining long overdue redress." *Id.*

The Court overrules this objection. Mr. Bellinsky never filed a motion requesting a hearing on the motions to dismiss. Moreover, a court is "not required to hold a hearing" before ruling on a motion to dismiss. *Knight v. Knight*, 228 F. App'x 810, 812 (10th Cir. 2007) (unpublished) (rejecting plaintiff's "argument that his due process rights

were violated when the district court granted [defendants'] motion to dismiss without a hearing"). As a result, the Court overrules Mr. Bellinsky's third objection.

D. Objection Four

Mr. Bellinsky's fourth objection raises several disputes with Judge Varholak's factual findings in the background section of the recommendation. Docket No. 76 at 17-19. First, Mr. Bellinsky argues that Judge Varholak "fraudulently" states that, "[t]his action arises out of Plaintiff's domestic relations case[, Case No. 2015DR7,] pending in the Gilpin County District Court . . . and two criminal cases in the Eighteenth Judicial District, Elbert County, [Case Nos. 2022M143 and 2022M152,] which involve violations of protective orders . . . (collectively the 'State Court Proceedings')." *Id.* at 17 (quoting Docket No. 72 at 2). Mr. Bellinsky claims that he does not have a "pending" domestic relations case and that he is not a party to the "known-void" domestic relations proceeding in Case No. 2015DR7. *Id.* at 18, 20. Mr. Bellinsky claims that Mr. Hart, Ms. Galan, and Mr. Lazar "fraudulently reopened" Mr. Bellinsky and Ms. Galan's "divorce case (2015DR7) in 2019 to carry out a conspiracy and diabolical plot to parentally kidnap the minor children from [Mr. Bellinsky's] primary care." *Id.* at 18 (footnote omitted). Furthermore, Mr. Bellinsky argues that the "subject matter" of this case is the "color of law '18th JD Crime Sprees' in the 18th Judicial District (where known-void criminal case 2022M143 was treasonously 'fixed' without authority;" while the "subject matter" of plaintiff's other federal lawsuit, Case No. 23-cv-03163-PAB-STV, is the "Relocation Crime Spree" in 2015DR7. *Id.* at 17.

The Court finds that Judge Varholak correctly concluded that Mr. Bellinsky is a party to Case No. 2015DR7, a domestic relations case in the Gilpin County District Court. *See In re: Marriage of Bellinsky*, Case No. 2015DR7.[5] The state court docket shows that Mr. Bellinsky is the "respondent" in the case and lists his status as "active." *Id.* In fact, Mr. Bellinsky filed a motion in that case as recent as March 25, 2024 and has filed other documents in the case as recent as August 12, 2024. *See id.* The Court also finds that Judge Varholak correctly concluded that this case arises out of Mr. Bellinsky's domestic relations case, Case No. 2015DR7, and two criminal cases in the Eighteenth Judicial District, Case Nos. 2022M143 and 2022M152. Mr. Bellinsky alleges that Mr. Hart, Ms. Galan, and Mr. Lazar have "conspired" with judges, court officials, and law enforcement in several cases – including Case Nos. 2015DR7, 2022M143, and 2022M152 – to "kidnap" Mr. Bellinsky's six minor children and "enslave Father as the 'respondent' in HART's child support and maintenance rackets." Docket No. 1 at 6, 9, 17-18, ¶¶ 37, 52, 54, 94. Accordingly, the Court overrules this portion of the objection.

Next, Mr. Bellinsky argues that Judge Varholak "fraudulently presents several half-truths," including "repeatedly referring to the 'State Proceeding' and to 'hearings' therein as if valid knowing that Father repeatedly referred to the 'void case 15DR7' and 'known-void relocation proceeding' and 'known-void hearings' therein." Docket No. 76 at 18. Mr. Bellinsky's allegations that Case No. 2015DR7 and the related hearings are

[5] The Court takes judicial notice of the state court docket in Case No. 2015DR7. *See Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006) (holding that a court may take judicial notice of facts which are a matter of public record when considering a motion to dismiss); *Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1298 n.2 (10th Cir. 2014) (noting that a court may "take judicial notice of documents and docket materials filed in other courts").

"void" is conclusory. A court does not need to accept conclusory allegations in a complaint as true when ruling on a motion to dismiss. *Moffett v. Halliburton Energy Servs., Inc.*, 291 F.3d 1227, 1231 (10th Cir. 2002). The Court therefore overrules this portion of the objection.

Finally, Mr. Bellinsky appears to argue that Judge Varholak omitted several facts in his background section. Docket No. 76 at 18-19. Mr. Bellinsky argues that because the individual defendants are being sued in their individual capacities, the defendants are "'stripped' of official immunity and other privileges and must retain their own *private* counsel or represent themselves." *Id.* at 19. Mr. Bellinsky insists that the state defendants are "treasonously represented by" the "rogue" Attorney General's Office, which is "stealing *public* funds and resources for *private* matters." *Id.* As the Court has explained multiple times to Mr. Bellinsky, "it is common for the government to represent state or local employees sued in their individual capacities." *Bellinsky v. Galan, et al.*, No. 23-cv-03461-PAB-STV, 2024 WL 2026995, at *4 (D. Colo. May 7, 2024) (quoting *Bellinsky v. Galan*, No. 23-cv-03163-PAB-STV, 2024 WL 1334180, at *5 (D. Colo. Mar. 28, 2024) (collecting cases)). Accordingly, the Court overrules this portion of the objection.

E. Objection Five

Mr. Bellinsky's fifth objection argues that the magistrate judge erred in concluding that *Younger* abstention applies to this case. Docket No. 76 at 9-22. The *Younger* abstention doctrine provides that "a federal court must abstain from deciding a case otherwise within the scope of its jurisdiction in 'certain instances in which the prospect of

undue interference with state proceedings counsels against federal relief.'" *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 522 (10th Cir. 2023) (quoting *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 953 F.3d 660, 669 (10th Cir. 2020) (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013))); *see also Younger*, 401 U.S. at 41-43. *Younger* abstention applies to three categories of state cases: state criminal prosecutions, civil enforcement proceedings, and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Graff*, 65 F.4th at 522 (citation omitted). Under *Younger*, a federal court must abstain if the following three conditions are satisfied: (1) the relevant state court proceeding is "ongoing;" (2) the state forum provides an adequate opportunity to raise the federal claims; and (3) an important state interest is present. *Id.* at 523.

Younger abstention applies in most circumstances "without regard to the relief requested." *Id.*; *see also D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004) (noting that the "*Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding"). Moreover, *Younger* abstention is not discretionary and, if abstention applies, a court must dismiss the claim without prejudice. *D.L.*, 392 F.3d at 1228; *see also Graff*, 65 F.4th at 523 n.32 (discussing how a court should dismiss claims without prejudice under *Younger* abstention, but noting that it is unclear in the Tenth Circuit whether "*Younger* abstention implicates federal courts' subject matter jurisdiction"). Although *Younger* abstention is mandatory, the Tenth Circuit has recognized three exceptions where a federal court may interfere in a state prosecution: (i) the prosecution

was "commenced in bad faith or to harass;" (ii) the prosecution was "based on a flagrantly and patently unconstitutional statute;" or (iii) the prosecution was "related to any other such extraordinary circumstance creating a threat of 'irreparable injury' both great and immediate." *Winn v. Cook*, 945 F.3d 1253, 1258-59 (10th Cir. 2019) (quoting *Phelps v. Hamilton*, 59 F.3d 1058, 1063-64 (10th Cir. 1995)).

To the extent that the state domestic relations or criminal proceedings remain "open and pending," Judge Varholak recommends that *Younger* abstention would apply to this case. Docket No. 72 at 7. Judge Varholak found that Mr. Bellinsky is a party to a domestic relations case in the First Judicial District, as well as several criminal cases in the Eighteenth Judicial District. *Id.* at 8. Judge Varholak found that the first *Younger* requirement was satisfied because it appears that the parties are still litigating the state cases. *Id.* Furthermore, Judge Varholak found that the second *Younger* requirement was met because the state courts provide an adequate forum for raising Mr. Bellinsky's federal claims. *Id.* at 8-9. Finally, Judge Varholak found that the third *Younger* requirement was satisfied because state criminal proceedings and family law proceedings implicate important state interests from which federal courts should generally abstain. *Id.* at 9-10 (collecting cases). Judge Varholak additionally found that Mr. Bellinsky failed to show that any of the *Younger* exceptions would apply to this case. *Id.* at 10-12. Accordingly, Judge Varholak recommends dismissing plaintiff's claims without prejudice under the *Younger* abstention doctrine. *Id.* at 13.

Mr. Bellinsky argues that *Younger* abstention is not applicable because none of the three requirements are satisfied. Docket No. 76 at 20. Mr. Bellinsky appears to

argue that the first requirement is not satisfied because Mr. Bellinsky is not a "party" to the domestic relations proceeding or the "known-void" criminal cases because he is a "victim, witness, and whistleblower." *Id.* As to the second *Younger* requirement, Mr. Bellinsky argues that Colorado state courts are "extremely corrupt," are "fixing" cases and engaging in "governmental racketeering," have never listened to Mr. Bellinsky, and do not follow federal or state law "at all." *Id.* As to the third *Younger* requirement, Mr. Bellinsky asserts that his complaint does not request federal "adjudication" of or federal "interference" in any state domestic relations matter or state criminal proceeding. *Id.* at 5, 21. Mr. Bellinsky also argues that the recommendation fails to identify whether his case falls within the "three 'exceptional circumstances'" meriting abstention. *Id.* at 12.

Furthermore, Mr. Bellinsky asserts that he only seeks monetary damages in this case and that Judge Varholak erred in concluding that plaintiff requests injunctive relief. *Id.* at 11-13. Mr. Bellinsky contends that *Younger* abstention does not apply to federal claims seeking monetary damages. *Id.* at 12-13, 15. Mr. Bellinsky maintains that his federal claims for monetary damages will not "interfere in any way with the state courts' ability to conduct their proceedings" and therefore *Younger* abstention is improper. *Id.* at 15. With no citation to any authority, Mr. Bellinsky asserts that Judge Varholak "failed to conduct a claim-by-claim Younger analysis." *Id.*[6]

The Court finds that Judge Varholak correctly concluded that *Younger* abstention applies in this case. As a preliminary matter, the Court finds that the state proceedings at issue, the domestic relations case and the criminal proceedings, are the type of

[6] Mr. Bellinsky did not object to the portion of the recommendation concluding that plaintiff's case does not fall within any of the *Younger* exceptions.

cases that *Younger* abstention encompasses. The complaint admits that Mr. Bellinsky faced criminal charges in several state criminal cases, Case Nos. 2022M143 and 2022M152. Docket No. 1 at 9, 20, ¶¶ 52, 101. *Younger* abstention applies to "state criminal prosecutions." *Graff*, 65 F.4th at 522. Moreover, the complaint alleges that Mr. Hart, Ms. Galan, and Mr. Lazar conspired with various state officials in Case No. 2015DR7 to "kidnap" his six minor children and "enslave Father as the 'respondent' in HART's child support and maintenance rackets." Docket No. 1 at 6, ¶ 37. The Court finds that Mr. Bellinsky's domestic relations case constitutes a civil proceeding involving certain orders that are "uniquely in furtherance of the state courts' ability to perform their judicial functions." *See Graff*, 65 F.4th at 522; *see also Morkel v. Davis*, 513 F. App'x 724, 728 (10th Cir. 2013) (unpublished) (discussing how the Tenth Circuit has "consistently applied *Younger* to child custody cases"); *Thompson v. Romeo*, 728 F. App'x 796, 798 (10th Cir. 2018) (unpublished) (finding that a federal action under 42 U.S.C. § 1983 against several judges was subject to *Younger* abstention); *Bryant v. McLean*, No. 23-cv-00997-NYW-KAS, 2024 WL 1195326, at *6 (D. Colo. Mar. 20, 2024) (accepting the magistrate judge's conclusion that cases adjudicating child custody are clearly within the category of cases that "are uniquely in furtherance of the state courts' ability to perform their judicial functions").

The Tenth Circuit has held that the first prong of the *Younger* abstention analysis, whether there is an "ongoing" state judicial proceeding, is determined based on the time "when the federal action was filed." *Dauwe v. Miller*, 364 F. App'x 435, 437 (10th Cir. 2010) (unpublished) (citing *Bear v. Patton*, 451 F.3d 639, 642 (10th Cir. 2006);

Bettencourt v. Bd. of Registration in Med., 904 F.2d 772, 777 (1st Cir.1990)); *see also Morkel*, 513 F. App'x at 727-28; *Egbune v. Baum*, No. 23-cv-02830-PAB, 2024 WL 1374905, at *4 (D. Colo. Apr. 1, 2024). "State proceedings end, and are therefore no longer ongoing, when a lower state court issues a judgment and the losing party allows the time for appeal to expire." *Egbune*, 2024 WL 1374905, at *4 (citing *Bear*, 451 F.3d at 642). Mr. Bellinsky filed this case on December 29, 2023. Docket No. 1. The complaint alleges that Mr. Bellinsky's trial in Case No. 2022M143 was scheduled for January 2 to January 4, 2024. *Id.* at 15, ¶ 86. The state court docket shows that Mr. Bellinsky's trial took place on those dates, Mr. Bellinsky was sentenced on April 8, 2024, and that Mr. Bellinsky filed an appeal on April 15, 2024. *See People of the State of Colorado v. Bellinsky*, Case No. 2022M143.[7] Likewise, the state court docket in Case No. 2015DR7 shows that the state court judge issued three orders on February 9, 2024 granting motions to relocate the minor children and modify the decision-making and parenting plan. *See In re: Marriage of Bellinsky*, Case No. 2015DR7.[8] Therefore, Case No. 2022M143 and Case No. 2015DR7 were ongoing at the time that Mr. Bellinsky filed this case. As a result, the Court finds that the first prong of the *Younger* abstention analysis is satisfied with respect to the portions of plaintiff's allegations arising out of Case No. 2022M143 and Case No. 2015DR7. *See Dauwe,* 364 F. App'x at 437; *Morkel*, 513 F. App'x at 726-27 (finding that the first *Younger* requirement was satisfied

[7] The Court takes judicial notice of the state court docket in Case No. 2022M143. *See Tal*, 453 F.3d at 1264 n.24; *Stan Lee Media, Inc.*, 774 F.3d at 1298.

[8] Moreover, the Colorado Court of Appeals' docket indicates that on March 1, 2024, Mr. Bellinsky filed an appeal in Case No. 2015DR7. *See In re: Marriage of Bellinsky*, Case No. 2024CA355. The docket indicates that the Colorado Court of Appeals has not yet issued a ruling on the appeal. *See id.*

because the state child proceedings were ongoing when plaintiff filed her federal lawsuit under 42 U.S.C. §§ 1983 and 1985).[9]

The Court next considers the second prong of the *Younger* abstention analysis, whether the state forum provides an adequate opportunity to raise the relevant federal claims. Mr. Bellinsky has the burden of establishing that state law prevents him from presenting his federal claims in the state proceedings. *See Morkel*, 513 F. App'x at 728-29 (citing *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1292 (10th Cir. 1999)). The Tenth Circuit has held that, "unless state law clearly bars the interposition of the federal statutory and constitutional claims, a plaintiff typically has an adequate opportunity to raise federal claims in state court." *Winn*, 945 F.3d at 1258 (internal quotations and citation omitted); *see also Morkel*, 513 F. App'x at 728 ("State courts are generally equally capable of enforcing federal constitutional rights as federal courts."). The Court finds that the second *Younger* requirement is satisfied because "Colorado law does not bar federal constitutional claims." *See Dauwe*, 364 F. App'x at 437 (quoting *Crown Point I, L.L.C. v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003)) (internal alterations omitted). Mr. Bellinsky provides no support for his conclusory assertion that Colorado state courts are "extremely corrupt," are "fixing" cases and

[9] The complaint alleges that Case No. 2022M152 was "comingled at first with 22M143 but later dismissed and sealed." Docket No. 1 at 9, ¶ 54. The complaint alleges that Judge Boyette "ordered dismissal of Case 22M152 and suspiciously sealed the case" on April 26, 2023. *Id.* at 13, ¶ 72. The Court was unable to find the state court docket for Case No. 2022M152 or identify whether Mr. Bellinsky filed any appeals in that case. Because the proceedings in Case No. 2022M152 do not appear to have been ongoing at the time that plaintiff filed this complaint, the Court finds that *Younger* abstention would likely not apply to the portion of plaintiff's claims arising out of Case No. 2022M152. However, for the reasons discussed below, the Court finds that the claims arising out of Case No. 2022M152 are barred by the *Rooker-Feldman* doctrine.

engaging in "governmental racketeering," have never listened to Mr. Bellinsky, and do not follow federal or state law "at all." *See* Docket No. 76 at 20. The Court finds that there is no reason why Mr. Bellinsky's federal claims "could not be given fully adequate consideration in the state courts." *See Dauwe*, 364 F. App'x at 437; *see also Winn*, 945 F.3d at 1258 ("*Younger* requires only the availability of an *adequate* state-court forum, not a favorable result in the state forum"). Accordingly, the second prong of the *Younger* abstention analysis is satisfied.

Finally, the Court considers the third prong of the *Younger* abstention analysis, whether an important state interest is present. "For the purposes of *Younger*, state criminal proceedings are viewed as 'a traditional area of state concern.'" *Winn*, 945 F.3d at 1258 (quoting *Seneca-Cayuga Tribe of Okla. v. Oklahoma ex rel. Thompson*, 874 F.2d 709, 713 (10th Cir. 1989)). Moreover, the "resolution of child custody matters" is "an important state interest." *See Morkel*, 513 F. App'x at 729 (noting that "comity considerations of the *Younger* doctrine are particularly vital in child custody proceedings, which are an especially delicate subject of state policy" (citation and internal quotations omitted)); *see also Thompson*, 728 F. App'x at 798 (holding that state child custody proceedings implicate important state interests because "[t]he whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States" (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 692 (1992))); *Wideman v. Colorado*, 242 F. App'x 611, 614 (10th Cir. 2007) (unpublished) (finding that it was "beyond dispute" that child custody proceedings "implicate important state interests"). The Court rejects Mr. Bellinsky's argument that

his complaint does not request federal "adjudication" of or federal "interference" in any state domestic relations matter or state criminal proceedings. *See* Docket No. 76 at 5, 21. Despite the fact that Mr. Bellinsky's claims are "put forward in constitutional terms, . . . cloaking an attack on a state court judgment in this way does not forestall application of . . . *Younger*." *See Dauwe*, 364 F. App'x at 437; *see also Bryant*, 2024 WL 1195326, at *6 (rejecting plaintiff's argument that his federal claims do not "stem from his state court child custody proceedings" because plaintiff's claims "raise allegations about, and assert injuries arising out of, various acts in the state court proceedings" and holding that plaintiff's "attempt to reframe" his claims does not bar application of *Younger*). As a result, the third *Younger* requirement is satisfied.

The Court rejects Mr. Bellinsky's argument that *Younger* abstention only applies to claims for injunctive relief, not monetary damages. The "*Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." *D.L.*, 392 F.3d at 1228. The magistrate judge correctly concluded that a judgment in plaintiff's favor in federal court on his claims for monetary relief would enable Mr. Bellinsky to argue in the state proceedings that the state court orders are void because this Court already determined that defendants violated Mr. Bellinsky's constitutional rights. *See* Docket No. 72 at 13. Moreover, although Mr. Bellinsky insists that he does not request injunctive relief, the complaint states that Mr. Bellinsky and his children "will continue to suffer damages until the '18th JD Crime Sprees' are stopped, Father is cleared of all false charges and his criminal record is expunged." Docket No. 1 at 17-18, ¶ 94F. To the extent that Mr.

Bellinsky requests that the federal court issue an injunction to expunge his state criminal record or otherwise halt the state proceedings, that relief is barred by *Younger*. *See Winn*, 945 F.3d at 1258 (noting that an injunction against state criminal-enforcement activities "seriously impairs the State's interest in enforcing its criminal laws, and implicates the concerns for federalism which lie at the heart of *Younger*" (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)).[10]

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[10] Mr. Bellinsky also objects to a footnote in the portion of the recommendation discussing the *Younger* abstention doctrine. *See* Docket No. 76 at 9-11. In the footnote, Judge Varholak states that

> In the Complaint, Plaintiff appears to request injunctive relief as well, specifically requesting "a federal district court judge solely to oversee the administration of due process and to referee the trial by jury" in the state courts. [# 1 at ¶ 32]. This is exactly the type of interference that *Younger* prevents. *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) (noting supervision and interruption of state court proceedings to adjudicate assertions of noncompliance would indirectly accomplish the kind of interference that *Younger* sought to prevent).

Docket No. 72 at 13 n.6. Mr. Bellinsky objects to Judge Varholak's use of the phrase "appears to" because a judge cannot make findings of fact from "appearances." Docket No. 76 at 10. Mr. Bellinsky also argues that Judge Varholak "fraudulently" added the phrase "in the state court" to this footnote to "make it appear as though [the] complaint seeks federal adjudication of state court matters or injunctive relief." *Id.* at 9. The Court overrules this objection. Judge Varholak's use of the phrase "appears to" was not improper because he was liberally construing an unclear statement in the complaint. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (noting that a *pro se* plaintiff's "pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers" (citation omitted)); *Diversey v. Schmidly*, 738 F.3d 1196, 1199 (10th Cir. 2013) (noting that, if a court "can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, [it] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." (citation omitted)). Furthermore, even if the recommendation incorrectly concludes that Mr. Bellinsky appears to request injunctive relief, this footnote does not alter the rest of the *Younger* abstention analysis in the recommendation because Judge Varholak explained that "the *Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." Docket No. 72 at 13 (quoting

Because all three *Younger* requirements are met, the Court finds that the magistrate judge properly recommended dismissing this case without prejudice under the *Younger* abstention doctrine. The Court therefore overrules Mr. Bellinsky's fifth objection.

F. Sixth Objection

Mr. Bellinsky's sixth objection argues that the magistrate judge erred in concluding that the *Rooker-Feldman* doctrine would apply to the case. Docket No. 76 at 13-14. "*Rooker-Feldman* prevents federal courts, with the notable exception of the United States Supreme Court, from exercising jurisdiction over 'cases 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.'" *Graff*, 65 F.4th at 514 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). The *Rooker-Feldman* doctrine is "tied to Congress's decision to vest federal appellate jurisdiction over state court judgments exclusively in the United States Supreme Court." *Id.* (citing *Exxon Mobil Corp.*, 544 U.S. at 283; 28 U.S.C. § 1257).

The *Rooker-Feldman* doctrine implicates a court's subject matter jurisdiction and applies where "(1) the plaintiff lost in state court, (2) the state court judgment caused the plaintiff's injuries, (3) the state court rendered judgment before the plaintiff filed the federal claim, and (4) the plaintiff is asking the district court to review and reject the

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D.L., 392 F.3d at 1228). The Court already found that Judge Varholak correctly concluded that a judgment for plaintiff in this case would have preclusive effects on the pending state court proceedings. Accordingly, the Court overrules Mr. Bellinsky's objection to footnote 6.

state court judgment." *Bruce v. City & Cnty. of Denver*, 57 F.4th 738, 746 (10th Cir. 2023); *see also Morkel*, 513 F. App'x at 727 ("This doctrine has a narrow scope, however, and applies only when a state court judgment is final."). The *Rooker-Feldman* doctrine applies when a litigant's claim seeks to "modify or set aside a state court judgment." *Graff*, 65 F.4th at 515; *see also Williams v. HSBC Bank USA, N.A.*, 681 F. App'x 693, 695 (10th Cir. 2017) (unpublished) ("the type of judicial action barred by *Rooker-Feldman* consists of a review of the proceedings already conducted by the lower tribunal to determine whether it reached its result in accordance with law" (citation and internal alterations omitted)). "*Rooker-Feldman* does not bar a federal court claim merely because it seeks relief inconsistent with a state court judgment." *Graff*, 65 F.4th at 515.

The magistrate judge found that, to the extent the state court proceedings were no longer ongoing, the *Rooker-Feldman* doctrine would bar plaintiff's claims. Docket No. 72 at 14. Judge Varholak noted that Mr. Bellinsky directly challenges various orders entered by the state courts, alleging that the orders were a product of collusion or fraud. *Id.* at 15. Judge Varholak found that plaintiff's claims would require the Court to review the state court proceedings "to determine whether the state courts' procedure and ultimate adverse judgment towards Plaintiff was the result of fraud and conspiracy or a proper interpretation of Colorado law." *Id.* at 16. As a result, to the extent that Mr. Bellinsky's claims arise from state court proceedings that have concluded, Judge Varholak recommends dismissing plaintiff's claims without prejudice under the *Rooker-Feldman* doctrine. *Id.* at 17.

Mr. Bellinsky argues that the *Rooker-Feldman* doctrine does not apply because plaintiff is "not attempting to have the federal court overturn any state court orders or judgments against him or to 'interfere' in any way in the 'state court proceedings.'" Docket No. 76 at 13. Mr. Bellinsky argues that his case is distinguishable from *Mann v. Boatright*, 477 F.3d 1140, 1147 (10th Cir. 2007), because Mr. Bellinsky "does not seek to void state judgments[,] but to recover damages for independent harms." *Id.* at 13-14. Mr. Bellinsky also objects to Judge Varholak calling plaintiff a "state court loser" because Mr. Bellinsky states that he is a victim of "injustice" and the magistrate judge's use of such language causes Mr. Bellinsky "further grief." *Id.* at 14.

The Court agrees with Judge Varholak, that to the extent that any of the state court judgments were final before Mr. Bellinsky filed this case, Mr. Bellinsky's claims are barred under the *Rooker-Feldman* doctrine.[11] The complaint alleges that Mr. Bellinsky was subjected to a "fraudulent" arraignment in Case No. 2022M152 and that Judge Kraemer entered "known-void" protection orders and bond conditions, while denying Mr. Bellinsky's requests for "reasonable bail." Docket No. 1 at 10-11, ¶¶ 58, 61. Mr. Bellinsky alleges that he will "continue to suffer damages until the '18th JD Crime Sprees' are stopped, Father is cleared of all false charges and his criminal record is

[11] Because the Court found that Case Nos. 2022DR7 and 2022M143 were ongoing at the time that plaintiff filed the complaint in this case, the *Rooker-Feldman* doctrine would not apply to claims arising out of those state cases. *See Morkel*, 513 F. App'x at 727 (noting that "*Rooker–Feldman* applies only when a federal court is asked to review the *final* decisions of a state court" and that, if the state court proceedings are ongoing when plaintiff files the federal lawsuit, then *Rooker-Feldman* would not apply). However, as discussed previously, it appears that Case No. 2022M152 was not ongoing at the time that plaintiff filed this complaint and, therefore, *Rooker-Feldman* would apply to the portion of plaintiff's claims arising out of Case No. 2022M152.

expunged," and Case Nos. 2022M152 and 2022M143 are "officially/administratively declared void." *Id.* at 17-18, ¶ 94F.[12] Contrary to Mr. Bellinsky's insistence that he is not "attempting to have the federal court overturn any state court orders," *see* Docket No. 76 at 13, the Court finds that Mr. Bellinsky's allegations and requested relief seek to "modify or set aside a state court judgment" in Case No. 2022M152. *See Graff*, 65 F.4th at 515; *see also Mann*, 477 F.3d at 1147 (finding that plaintiff's constitutional claims for "monetary damages against a variety of government actors and private individuals" were barred by the *Rooker-Feldman* doctrine because the claims were "inextricably intertwined with the probate court judgments"). Accordingly, to the extent that the state court proceedings in Case No. 2022M152 were final at the time plaintiff filed his federal complaint, Mr. Bellinsky's claims arising out of this state case are barred under the *Rooker-Feldman* doctrine. *See Thompson*, 728 F. App'x at 798-99 (holding that, to "the extent that state court proceedings have concluded, the district court correctly applied the *Rooker-Feldman* doctrine" because plaintiff argued that "his federal

[12] Mr. Bellinsky's complaint repeatedly challenges the legitimacy of the orders and judgments in his state court cases. The complaint alleges that Case No. 2022M143 stems from Mr. Bellinsky's violation of a "known-void" temporary protection order that Judge Kraemer "fraudulent[ly]" issued in September 2022. Docket No. 1 at 8, ¶¶ 46, 48. Mr. Bellinsky alleges that Judge Boyette subsequently granted a "known-void" permanent protection order against him. *Id.* at 9, ¶ 51. Furthermore, the complaint alleges that Judge Boyette "commit[ed] multiple material frauds" by denying Mr. Bellinsky's motions to dismiss Case No. 2022M143. *Id.* at 12-13, ¶¶ 68-69, 73-74. The complaint asserts that Judge Boyette "unlawfully and illegally entered a 'not guilty' plea for Father" and scheduled a "known-void jury trial," while Judge Slade denied Mr. Bellinsky's motion to stay the proceedings in Case No. 2022M143. *Id.* at 13-14, ¶¶ 73, 78. Mr. Bellinsky alleges that each defendant in this case knows that "all orders, judgments, [and] other decisions" in Case Nos. 2015DR7, 2022M152, and 2022M143 are "null and void." *Id.* at 17, ¶ 94.

civil rights have been violated by state court proceedings and orders"). The Court accordingly overrules Mr. Bellinsky's sixth objection.[13]

G. Non-Objected to Portions of the Recommendation

The Court has reviewed the rest of the recommendation to satisfy itself that there are "no clear error[s] on the face of the record." *See* Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, the Court has concluded that the recommendation is a correct application of the facts and the law.[14] Accordingly, the Court accepts the recommendation and dismisses Mr. Bellinsky's claims without prejudice as barred by the *Younger* abstention doctrine or the *Rooker-Feldman* doctrine.[15]

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[13] The Court also overrules Mr. Bellinsky's objection that Judge Varholak improperly called him a "state court loser." *See* Docket No. 76 at 14. The magistrate judge was using the language found in Tenth Circuit and Supreme Court cases. *See Graff*, 65 F.4th at 514 ("*Rooker-Feldman* prevents federal courts . . . from exercising jurisdiction over 'cases brought by *state-court losers* complaining of injuries caused by state-court judgments . . .'" (quoting *Exxon Mobil Corp.*, 544 U.S. at 284 (emphasis added)). There is no indication that Judge Varholak used this language to cause Mr. Bellinsky "further grief." *See* Docket No. 76 at 14.

[14] The complaint contains vague allegations about a "conspiracy" between the defendants. *See, e.g.*, Docket No. 1 at 27-28, ¶¶ 112-114. Even if the complaint could be construed to state a constitutional claim that is not inextricably tied to the state court proceedings, Mr. Bellinsky does not object on that ground. As a result, the Court declines to consider that issue. *See Thomas*, 474 U.S. at 150 ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.").

[15] In their response to plaintiff's objection, the district attorney defendants request that the Court dismiss the claims against the district attorney defendants with prejudice because they are entitled to absolute prosecutorial immunity. Docket No. 77 at 2. Judge Varholak did not address the district attorney defendants' absolute immunity argument because he found that plaintiff's claims were barred under *Younger* or *Rooker-Feldman*. Docket No. 72 at 7. The district attorney defendants did not file an objection to the magistrate judge's recommendation. Accordingly, the Court declines to consider this argument. *See Thomas*, 474 U.S. at 150; *see also Hunter v. HCA*, 812 F.

IV. CONCLUSION

Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge [Docket No. 72] is **ACCEPTED**. It is further

ORDERED that plaintiff's Objections to Magistrate's Known-Void Recommendation [Docket No. 76] are **OVERRULED**. It is further

ORDERED that Parker's Motion to Dismiss [Docket No. 20] is **GRANTED in part**. It is further

ORDERED that the District Attorney Defendants' Motion to Dismiss Complaint (ECF 1) [Docket No. 40] is **GRANTED in part.** It is further

ORDERED that defendant Andrew Newton Hart's Motion to Dismiss [Docket No. 42] is **GRANTED in part**. It is further

ORDERED that the State Defendants' Motion to Dismiss [Docket No. 45] is **GRANTED in part**. It is further

ORDERED that defendant Steven James Lazar's Motion to Dismiss [Docket No. 47] is **GRANTED in part**. It is further

ORDERED that defendant Rachel Zinna Galan's Motion to Dismiss [Docket No. 49] is **GRANTED in part**. It is further

ORDERED that plaintiff's claims against each defendant are **DISMISSED without prejudice**. It is further

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App'x 774, 776 (10th Cir. 2020) (unpublished) (noting that the firm waiver rule provides that a party's "failure to make timely objections" to the magistrate judge's recommendation "waives appellate review of both factual and legal questions").

ORDERED that this case is closed.

DATED August 22, 2024.

BY THE COURT:

PHILIP A. BRIMMER
Chief United States District Judge

APPENDIX E
TO
PETITION FOR WRIT OF CERTIORARI

Magistrate Judge's Recommendation

Bellinsky v. Galán, No. 1:23-cv-03163

(D. Colo. April 16, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-03163-PAB-STV

JACOB BELLINSKY,

Plaintiff,

v.

RACHEL ZINNA GALAN;
STEVEN JAMES LAZAR;
ANDREW NEWTON HART;
TERRI MEREDITH;
RYAN PAUL LOEWER;
BRYCE DAVID ALLEN;
JEFFREY RALPH PILKINGTON;
BRIAN DALE BOATRIGHT; and,
STATE OF COLORADO,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Magistrate Judge Scott T. Varholak

This matter comes before the Court on the State Defendants' Motion to Dismiss [#27], Defendant Andrew Newton Hart's Motion to Dismiss [#30], Defendant Rachel Zinna Galan's Motion to Dismiss [#38], and Defendant Steven James Lazar's Motion to Dismiss [#44] (collectively, the "Motions"). The Motions have been referred to this Court. [## 28, 31, 39, 45] This Court has carefully considered the Motions and related briefing, the entire case file and the applicable case law, and has determined that oral argument would not

APPENDIX E

materially assist in the disposition of the Motion. For the following reasons, the Court respectfully **RECOMMENDS** that the Motions be **GRANTED**.

I. BACKGROUND[1]

This action arises out of Plaintiff's domestic relations case, Case No. 2015DR7, pending in the Gilpin County District Court (the "State Proceedings"). [#1 at ¶¶ 19, 26] Plaintiff asserts that after he attained primary custody of his children in his divorce case, his ex-wife, Defendant Rachel Zinna Galan, her fiancé, Defendant Steven James Lazar, and an attorney, Defendant Andrew Newton Hart, conspired to "kidnap" Plaintiff's children and "interfere[ ] with [Plaintiff's] parenting time." [*Id.* at ¶¶ 27-28] Plaintiff alleges these three individuals, along with the Gilpin County Court clerk, several state court judges, and the Chief Justice of the Colorado Supreme Court engaged in a "crime spree" against Plaintiff in the State Proceedings. [*Id.* at ¶¶ 31, 48]

Specifically, the Complaint asserts the following: on May 31, 2023, Defendant Hart filed a motion to withdraw as counsel of record for Defendant Galan in the State Proceedings. [*Id.* at ¶ 41] The next day, Defendant Galan filed three motions, titled: "Amended: Motion to Relocate Children," "Amended Parenting Plan," and "Amended:

[1] The facts are drawn from the allegations in Plaintiff's Complaint (the "Complaint") [#1], which the Court accepts as true at this early stage of the proceedings. *See Wilson v. Montano*, 715 F.3d 847, 850 n.1 (10th Cir. 2013) (citing *Brown v. Montoya*, 662 F.3d 1152, 1162 (10th Cir. 2011)). The facts are also drawn from the related state court proceedings, of which the Court takes judicial notice. *Brickert v. Deutsche Bank Nat'l Tr. Co.*, 380 F. Supp. 3d 1127, 1133 n.1 (D. Colo. 2019) ("[A] court can take judicial notice of 'documents and docket materials filed in other courts.'") (quoting *Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1298 n.2 (10th Cir. 2014)). Moreover, the Complaint extensively references the related state court proceedings. [*See generally* #1]; *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (holding a court "must consider the complaint in its entirety . . . [and] documents incorporated into the complaint by reference").

Motion and Affidavit to Change Decision-Making." [*Id.* at ¶ 42] Plaintiff argues these motions are fraudulent because they appear to have been drafted by the attorney who withdrew. [*Id.* at ¶ 43] Plaintiff therefore objected to the attorney's motion to withdraw. [*Id.* at ¶ 44] Plaintiff also filed responses objecting to the three motions. [*Id.* at ¶ 46] Plaintiff simultaneously sent a copy of his objections and a "Renewed Demand for Due Relief" to the Chief Justice of the Colorado Supreme Court, Defendant Brian Dale Boatright, and the Chief Judge of the First Judicial District, Defendant Jeffrey Ralph Pilkington. [*Id.* at ¶ 47] These Defendants did not do anything in response. [*Id.* at ¶¶ 47, 33-34]

Defendant Ryan Paul Loewer, the then-presiding Magistrate in the State Proceedings,[2] overruled Plaintiff's objections to the attorney's motion to withdraw. [*Id.* at ¶ 48] Plaintiff alleges that several of the other Defendant judges "knowingly joined in Hart's [ ] conspiracy." [*Id.* at ¶¶ 48-49] Plaintiff appears to allege that the clerk of court, Defendant Terri Meredith, was similarly involved in the conspiracy by failing to timely notify Plaintiff of several filings. [*Id.* at ¶¶ 45, 51]

On July 17, 2023, Plaintiff removed the matter to federal court. [*Id.* at ¶¶ 50-53] On September 27, 2023, a hearing was held in the State Proceedings. [*Id.* at ¶ 51] At the hearing, Defendant Magistrate Bryce David Allen stayed the State Proceedings, anticipating a remand of the case to state court, and reset a motions hearing regarding relocation of Plaintiff's children for January 30, 2024. [*Id.* at ¶ 56; #27-1] On November 21, 2023, this District remanded the case to the Gilpin County District Court due to the

[2] Defendant Loewer has since been appointed as a district judge for the First Judicial District.

Court's lack of subject matter jurisdiction. *Galan v. Bellinsky*, No. 23-cv-01799-PAB (D. Colo. Nov. 21, 2023), ECF No. 25.

On November 30, 2023, Plaintiff initiated this lawsuit. [#1] The Complaint asserts constitutional claims under §§ 1981, 1983, 1985, and 1986. [*Id.* at ¶¶ 58-89] The Complaint also alleges a state law tort claim for intentional infliction of emotional distress. [*Id.* at ¶¶ 90-95] Plaintiff seeks compensatory and punitive damages. [*Id.* at ¶ 96]

On December 26, 2023, Defendants the State of Colorado, Terri Meredith, Judge Loewer, Chief Judge Pilkington, Magistrate Allen, and Chief Justice Boatright (collectively, the "State Defendants") filed a Motion to Dismiss. [#27] That same day, Defendant Hart filed a Motion to Dismiss. [#30] On January 12, 2024, Defendant Rachel Zinna Galan, *pro se*, filed a Motion to Dismiss. [#38] On January 17, 2024, Defendant Lazar, *pro se*, filed a Motion to Dismiss. [#44] Plaintiff has responded to the Motions [## 41, 42, 43, 46], and Defendants have filed their replies [## 47, 54, 60, 61].

II. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) empowers a court to dismiss a complaint for "lack of subject-matter jurisdiction." Fed. R. Civ. P. 12(b)(1). Dismissal under Rule 12(b)(1) is not a judgment on the merits of a plaintiff's case, but only a determination that the court lacks authority to adjudicate the matter. *See Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994) (recognizing federal courts are courts of limited jurisdiction and may only exercise jurisdiction when specifically authorized to do so). A court lacking jurisdiction "must dismiss the cause at any stage of the proceedings in which it becomes

apparent that jurisdiction is lacking." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

Rule 12(b)(1) challenges are generally presented in one of two forms: "[t]he moving party may (1) facially attack the complaint's allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests." *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074 (10th Cir. 2004) (quoting *Maestas v. Lujan*, 351 F.3d 1001, 1013 (10th Cir. 2003)). When reviewing a facial attack on subject matter jurisdiction, the Court "presume[s] all of the allegations contained in the amended complaint to be true." *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002).

B. Federal Rule of Civil Procedure 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." In deciding a motion under Rule 12(b)(6), a court must "accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to the plaintiff." *Cassanova v. Ulibarri*, 595 F.3d 1120, 1124 (10th Cir. 2010) (quoting *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009)). Nonetheless, a plaintiff may not rely on mere labels or 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 (2007).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Plausibility refers "to the

scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'" *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). "The burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he or she is entitled to relief." *Id.* (quoting *Twombly*, 550 U.S. at 556). The ultimate duty of the court is to "determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed." *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007).

C. Pro Se Litigants

"A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)). "The *Haines* rule applies to all proceedings involving a pro se litigant." *Id.* at 1110 n.3. The Court, however, cannot be a pro se litigant's advocate. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008). Moreover, pro se parties must "follow the same rules of procedure that govern other litigants." *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (quoting *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992)).

III. ANALYSIS

Defendants make several arguments in support of dismissal, but because the Court agrees that the *Younger* abstention or *Rooker-Feldman* doctrines apply [## 27 at 5-7; 30 at 8-11; 38 at 1], the Court does not address Defendants' alternative arguments.

A. *Younger* Abstention

To the extent the state domestic relations proceedings remains open and pending,[3] then the abstention doctrine from *Younger v. Harris*, 401 U.S. 37 (1971), applies. A court lacks jurisdiction under the *Younger* abstention doctrine when there is an ongoing state court proceeding, the state court provides an adequate forum for raising the federal claims, and the proceedings fall within one of the three "exceptional circumstances" identified in *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 368 (1989). *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81-82 (2013); *see also Makeen v. Colorado*, No. 14-cv-3452-WJM-CBS, 2016 WL 8470186, at *4-5 (D. Colo. Sept. 16, 2016). "*Younger* abstention is jurisdictional" and thus must be addressed "at the outset." *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228-29 (10th Cir. 2004).

All three *Younger* requirements are met here. First, Plaintiff is a party in a domestic relations case in Gilpin County District Court. [#1 at ¶¶ 19, 26] As of the filing of the federal complaint, there was a pending motion in the state case and a hearing scheduled for January 30, 2024. [## 27-1; 1 at ¶ 56] Moreover, the Complaint's reference to a "relocation crime spree" in the State Proceedings, which "continues unabated to this day" [#1 at ¶ 63], and Plaintiff's request that we "halt 1st Judicial District case #2015DR7 and 18th Judicial District case #22M143" [*Id.* at ¶ 88] indicate that the parties are still litigating the state case. Thus, the first *Younger* requirement is met.[4]

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[3] "For purposes of [Younger], a state prosecution is considered to be pending if as of the filing of the federal complaint not all state appellate remedies have been exhausted." *Mounkes v. Conklin,* 922 F. Supp. 1501, 1511 (D. Kan. 1996).

[4] As detailed below, to the extent the State Proceedings are no longer being litigated, Plaintiff's claims are still not justiciable in this Court.

Second, the state court provides an adequate forum for raising Plaintiff's federal claims. "Unless state law clearly bars the interposition of the federal statutory and constitutional claims, a plaintiff typically has an adequate opportunity to raise federal claims in state court." *Winn v. Cook*, 945 F.3d 1253, 1258 (10th Cir. 2019) (quotation omitted). In the Responses to the Motions, Plaintiff does not address whether the State Proceeding is an adequate forum to hear the federal claims. [*See generally* ## 41; 42; 43; 46] Critically, the events discussed in the Complaint are the same events at the heart of the pending State Proceeding. [#1 at ¶¶ 26, 31, 35-36, 40, 50, 54-55, 61, 64, 70, 74, 78, 88 (citing Case No. 2015DR7)] And, there is no reason to believe these claims will not be given full and proper consideration by the state court. *See Capps v. Sullivan*, 13 F.3d 350, 354 n.2 (10th Cir. 1993) ("[F]ederal courts should abstain from the exercise of . . . jurisdiction if the issues raised . . . may be resolved either by trial on the merits in the state court or by other [available] state procedures.") (quotation omitted); *see generally Robb v. Connolly*, 111 U.S. 624, 637 (1984) (state courts have an obligation "to guard, enforce, and protect every right granted or secured by the constitution of the United States"). Thus, the second *Younger* requirement is met.

Finally, the Court finds that divorce and child welfare are family law matters that implicate important state court interests from which federal courts generally should abstain.[5] *Alfaro v. Cnty. of Arapahoe*, 766 F. App'x 657, 661 (10th Cir. 2019) (applying

[5] Plaintiff appears to conflate the abstention doctrines with the domestic relations exception. [## 41 at 19; 42 at 14] Here, the Court need not analyze whether the domestic relations exception applies. Even assuming Plaintiff is pursuing entirely independent constitutional claims, rather than requesting a modification to the child-custody decree, those claims plainly attack orders issued in the State Proceedings, which triggers *Younger* abstention. [*See* #1 at ¶ 74 ("the trio's 'relocation' matter and proceeding in 2015DR7 are void")]

Younger to ongoing state-court divorce and child-custody proceedings); *Thompson v. Romeo*, 728 F. App'x 796, 798 (10th Cir. 2018) (holding that the district court properly applied *Younger* abstention to dismiss claims arising from purportedly unconstitutional orders entered in an ongoing state-court divorce and child-custody proceeding because the subject of domestic relations between a parent and child "belongs to the laws of the States and not the laws of the United States"); *Morkel v. Davis*, 513 F. App'x 724, 728 (10th Cir. 2013) (stating that the Tenth Circuit has "consistently applied *Younger* to child custody cases"); *Bryant v. Mclean*, No. 23-cv-00997-NYW-KAS, 2024 WL 809897, at *7-8 (D. Colo. Feb. 27, 2024) (applying *Younger* where Plaintiff alleged that judges, attorneys, and other participants in the child custody proceedings violated Plaintiff's constitutional rights), *report and recommendation adopted*, 2024 WL 1195326 (D. Colo. Mar. 20, 2024); *Everett v. Bollinger-Everett*, No. 1:22-cv-01133-CNS-SKC, 2023 WL 1805566, at *2 (D. Colo. Jan. 19, 2023) ("under the *Younger* abstention doctrine, the Court will not intervene in the state's on-going domestic relations proceedings"), *report and recommendation adopted*, 2023 WL 1801338 (D. Colo. Feb. 7, 2023); *Escalante v. Burmaster*, No. 23-3195-JWL, 2023 WL 5275117, at *3 (D. Kan. Aug. 16, 2023) (holding that *Younger* precluded the court from intervening in child custody proceedings, given that they are "an especially delicate subject of state policy" (quotation omitted)). Thus, the third *Younger* requirement is met. Accordingly, all three *Younger* requirements have been satisfied.

Plaintiff argues *Younger* is inapplicable because the Complaint "seeks *only* money damages." [# 42 at 13 (emphasis in original); *see also* ## 41 at 21; 43 at 5] "Although the original *Younger* holding was limited to the proposition that injunctive relief was subject

to abstention, the Tenth Circuit has expanded the doctrine to include declaratory and monetary relief as well." *Flanders v. Snyder Bromley*, No. 09-cv-01623-CMA-KMT, 2010 WL 2650028, at *4 (D. Colo. June 30, 2010). Here, Plaintiff seeks compensatory and punitive damages. [#1 at ¶ 96] The Tenth Circuit has held that "the *Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." *D.L.*, 392 F.3d at 1228. In particular, the principles behind *Younger* extend to the situation where "a plaintiff who seeks only monetary damages could, once a money judgment is obtained, seek the additional relief of an injunction and could argue in state court that the federal judgment has preclusive effect." *Id.* Such is precisely the case here. A judgment in Plaintiff's favor in this case would enable Plaintiff to argue before the Gilpin County District Court that, for example, Defendants engaged in unconstitutional conduct because this Court had already determined that Plaintiff's constitutional rights were violated—indeed, for example, it would allow Plaintiff to argue to the presiding judge in the State Proceedings that Judge Loewer's prior orders were void as violative of Plaintiff's constitutional rights. *Younger* counsels against just such a result.[6] Accordingly, to the extent the State Proceedings remain pending (as they appear from the Complaint to be), the Court finds that *Younger* abstention applies to all of Plaintiff's claims against Defendants. Thus, to

[6] In the Complaint and Responses to the Motions, Plaintiff appears to request injunctive relief as well, specifically requesting "a federal district court judge solely to oversee the administration of due process and to referee the trial by jury" in the state court. [# 1 at ¶ 25; *see also* ## 41 at 7; 42 at 9; 43 at 5; 46 at 11-12]. This is exactly the type of interference that *Younger* prevents. *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) (noting supervision and interruption of state court proceedings to adjudicate assertions of noncompliance would indirectly accomplish the kind of interference that *Younger* sought to prevent).

the extent the State Proceedings remain pending, the Court respectfully RECOMMENDS that the district court abstain from deciding Plaintiff's action and that the Complaint be DISMISSED WITHOUT PREJUDICE. *Goings v. Sumner Cty. Dist. Attorney's Office*, 571 F. App'x 634, 639 (10th Cir. 2014) ("Under our precedent, *Younger*-abstention dismissals have been treated as roughly akin to jurisdictional dismissals and, accordingly, have been considered to be without prejudice." (emphasis omitted)).

B. *Rooker-Feldman*

Several Defendants also argue that the claims are barred pursuant to the *Rooker-Feldman* doctrine. [## 27 at 6-7; 30 at 10-11] The Court agrees to the extent the State Proceedings are no longer ongoing.

"The *Rooker–Feldman* doctrine establishes, as a matter of subject-matter jurisdiction, that only the United States Supreme Court has appellate authority to review a state-court decision."[7] *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074–75 (10th Cir. 2004) (footnote omitted). "The *Rooker–Feldman* doctrine precludes a losing party in state court who complains of injury caused by the state-court judgment from bringing a case seeking review and rejection of that judgment in federal court." *Miller v. Deutsche Bank Nat'l Trust Co. (In re Miller)*, 666 F.3d 1255, 1261 (10th Cir. 2012). The doctrine is "confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments

[7] "The *Rooker–Feldman* doctrine is derived from 28 U.S.C. § 1257(a), [which] provides that only the Supreme Court has jurisdiction to hear appeals from final state court judgments," *Suasnavas v. Stover*, 196 F. App'x 647, 652 n.3 (10th Cir. 2006) (internal quotation omitted), and gets its name from two Supreme Court decisions: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

The Tenth Circuit has "concluded that 'the type of judicial action barred by *Rooker–Feldman* [ ] consists of a review of the proceedings already conducted by the "lower" tribunal to determine whether it reached its result in accordance with law.'" *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182, 1193 (10th Cir. 2010) (quoting *Bolden v. City of Topeka*, 441 F.3d 1129, 1143 (10th Cir. 2006) (alterations in ex rel. Jensen)). "*Rooker–Feldman* does not bar federal-court claims that would be identical even had there been no state-court judgment; that is, claims that do not rest on any allegation concerning the state-court proceedings or judgment." *Id.* (quoting *Bolden,* 441 F.3d at 1145). The court has applied the *Rooker–Feldman* doctrine where the relief sought required the federal court to review and reject the state court judgment. *See id.* (*citing Mann v. Boatright*, 477 F.3d 1140, 1147 (10th Cir. 2007)). On the other hand, the court has refused to apply the doctrine when the federal suit would not reverse or otherwise undo the state court judgment. *See id.* (citing *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1238 (10th Cir. 2006)).

Applied here, the review and relief sought would require this Court to "review . . . the proceedings already conducted by the [state] tribunal to determine whether it reached its result in accordance with law." *Jensen*, 603 F.3d at 1193 (quotation omitted). Plaintiff directly challenges various orders entered by the state court, alleging that these orders were a product of collusion or fraudulent. [#1 at ¶ 64 ("All orders, judgments, other decisions, proceedings, and actions in case 2015DR7 were automatically rendered void

by operation of law due to any one of the trio's frauds upon the court" (emphasis omitted))] In order to determine the merits of these claims, the Court would be required to review the state court proceedings to determine whether the state court's procedure and ultimate adverse judgment towards Plaintiff was the result of fraud and conspiracy or a proper interpretation of Colorado law and assessment of Plaintiff's claims. It is just this type of review that is prohibited by the *Rooker–Feldman* doctrine. *Jensen*, 603 F.3d at 1193; *see also Farris v. Burton*, 686 F. App'x 590, 592 (10th Cir. 2017) (applying *Rooker–Feldman* where the plaintiff's claims would require "a federal court . . . to review the [ ] state court proceedings to determine if the decision . . . was reached as a result of fraud or from a proper assessment of the claims"). For example, Plaintiff argues Defendant Judge Loewer, "fraudulently" overruled Plaintiff's objections to the attorney's motion to withdraw, and Plaintiff therefore concludes that this Order was the product of a conspiracy amongst Defendants Judge Loewer, Chief Judge Pilkington, Chief Justice Boatright and attorney Hart. [#1 at ¶ 48] This claim (as the Court understands it) directly challenges the state court's application of local rules under the facts of Plaintiff's state-court case. Reviewing the merits of such a claim would also clearly "'consist[] of a review of the proceedings already conducted by the [state] tribunal to determine whether it reached its result in accordance with law,'" which is barred by the *Rooker–Feldman* doctrine. *Jensen*, 603 F.3d at 1193 (quoting *Bolden*, 441 F.3d at 1143).

As to the relief sought, Plaintiff seeks unspecified monetary damages. [#1 at ¶ 96] The entirety of the Complaint demonstrates that these damages arose from the allegedly improper judgments and/or orders issued in the state court proceeding. As a result, the claims for monetary damages are barred by *Rooker-Feldman*. *Mann*, 477 F.3d at 1147

(finding the plaintiff's claims for monetary damages were also barred by *Rooker-Feldman* because they would require the federal judge to reject the state court's judgments and thus were "inextricably intertwined" with those judgments). Accordingly, to the extent the State Proceedings have concluded, the Court respectfully RECOMMENDS that the Motions be GRANTED and that the Complaint be DISMISSED WITHOUT PREJUDICE. *See Lambeth v. Miller*, 363 F. App'x 565, 566, 569 (10th Cir. 2010) (finding that dismissal for lack of subject matter jurisdiction on the basis of the *Rooker–Feldman* doctrine must be "without prejudice"); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) ("A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice.").

IV. CONCLUSION

For the foregoing reasons, regardless of whether the State Proceedings remain ongoing (which would implicate *Younger*) or have been completed (which would implicate *Rooker-Feldman*), the Court respectfully RECOMMENDS that the Motions [## 27, 30, 38, 44] be GRANTED and that the Complaint be DISMISSED WITHOUT PREJUDICE. *Gardner v. Schumacher*, 547 F. Supp. 3d 995, 1038-46 (D.N.M. 2021) (applying *Younger* to any claims that remained pending in state court and *Rooker-Feldman* to the extent all state proceedings had concluded).[8]

[8] Within fourteen days after service of a copy of this Recommendation, any party may serve and file written objections to the magistrate judge's proposed findings of fact, legal conclusions, and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Griego v. Padilla (In re Griego)*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the district court on notice of the basis for the objection will not preserve the objection for *de novo* review. "[A] party's objections to the magistrate judge's report and

DATED: April 16, 2024

BY THE COURT:

s/Scott T. Varholak
United States Magistrate Judge

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recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar *de novo* review by the district judge of the magistrate judge's proposed findings of fact, legal conclusions, and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings of fact, legal conclusions, and recommendations of the magistrate judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (holding that the district court's decision to review magistrate judge's recommendation *de novo* despite lack of an objection does not preclude application of "firm waiver rule"); *Int'l Surplus Lines Ins. Co. v. Wyo. Coal Refining Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (finding that cross-claimant waived right to appeal certain portions of magistrate judge's order by failing to object to those portions); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (finding that plaintiffs waived their right to appeal the magistrate judge's ruling by failing to file objections). *But see, Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (holding that firm waiver rule does not apply when the interests of justice require review).

APPENDIX F
TO
PETITION FOR WRIT OF CERTIORARI

Magistrate Judge's Recommendation

Bellinsky v. Galán, No. 1:23-cv-03461

(D. Colo. May 1, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-03461-PAB-STV

JACOB BELLINSKY,

Plaintiff,

v.

RACHEL ZINNA GALAN,
STEVEN JAMES LAZAR,
ANDREW NEWTON HART,
JOHN EVAN KELLNER,
EVA ELAINE WILSON,
RAIF EDWIN TAYLOR,
GINA PARKER
GARY MICHAEL KRAMER,
PALMER L. BOYETTE,
THERESA MICHELLE SLADE,
MICHELLE ANN AMICO,
BRIAN DALE BOATRIGHT, and
STATE OF COLORADO,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Magistrate Judge Scott T. Varholak

This matter comes before the Court on Defendant Gina Parker's Motion to Dismiss [#20], the District Attorney Defendants' Motion to Dismiss [#40], Defendant Andrew Newton Hart's Motion to Dismiss [#42], the State Defendants' Motion to Dismiss [#45], Defendant Steven James Lazar's Motion to Dismiss [#47], and Defendant Rachel Zinna Galan's Motion to Dismiss [#49] (collectively, the "Motions"). The Motions have been

APPENDIX F

referred to this Court. [## 21, 41, 43, 46, 48, 50] This Court has carefully considered the Motions and related briefing, the entire case file and the applicable case law, and has determined that oral argument would not materially assist in the disposition of the Motion. For the following reasons, the Court respectfully **RECOMMENDS** that the Motions be **GRANTED**.

I. BACKGROUND[1]

This action arises out of Plaintiff's ongoing domestic relations case, Case No. 2015DR7, pending in the Gilpin County District Court (the "State Domestic Relations Proceedings") [#1 at ¶¶ 33-37], and two criminal cases in the Eighteenth Judicial District, Elbert County, Case Nos. 22M143 and 22M152, which involve violations of protective orders (the "State Criminal Proceedings") [*Id.* at ¶¶ 25-26, 52-54] (collectively the "State Court Proceedings"). Plaintiff asserts that after he obtained primary custody of his children in his divorce case, his ex-wife, Defendant Rachel Zinna Galan, her fiancé, Defendant Steven James Lazar, and an attorney, Defendant Andrew Newton Hart, conspired to "kidnap" Plaintiff's children and "interfere[ ] with [Plaintiff's] parenting time." [*Id.* at ¶¶ 33-35] Plaintiff alleges these three individuals, along with "judges, magistrates,

[1] The facts are drawn from the allegations in Plaintiff's Complaint (the "Complaint") [#1], which the Court accepts as true at this early stage of the proceedings. *See Wilson v. Montano*, 715 F.3d 847, 850 n.1 (10th Cir. 2013) (citing *Brown v. Montoya*, 662 F.3d 1152, 1162 (10th Cir. 2011)). The facts are also drawn from the related state court proceedings, of which the Court takes judicial notice. *Brickert v. Deutsche Bank Nat'l Tr. Co.*, 380 F. Supp. 3d 1127, 1133 n.1 (D. Colo. 2019) ("[A] court can take judicial notice of 'documents and docket materials filed in other courts.'") (quoting *Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1298 n.2 (10th Cir. 2014)). Moreover, the Complaint extensively references the related state court proceedings. [*See generally* #1]; *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (holding a court "must consider the complaint in its entirety . . . [and] documents incorporated into the complaint by reference").

other court officers, law enforcement and other officials" engaged in a "crime spree" against Plaintiff in the State Domestic Relations Proceedings, and since 2022 in the State Criminal Proceedings as well. [*Id.* at ¶¶ 35-37]

On April 13, 2022, Plaintiff served a criminal complaint against the several state and federal authorities responsible for the "crime spree." [*Id.* at ¶ 38] On September 26, 2022, Defendant Galan filed for a temporary protective order against Plaintiff. [*Id.* at ¶ 45] The following day, Defendant Judge Gary Michael Kramer conducted an *ex parte* hearing with Defendant Galan and granted her the protective order. [*Id.* at ¶ 46] On September 30, 2022, Plaintiff allegedly violated the temporary protective order by texting Defendant Galan. [*Id.* at ¶ 48] Defendant Galan requested a permanent protective order [*Id.* at ¶ 47], and on October 7, 2022, Defendant Judge Palmer L. Boyette conducted an *ex parte* hearing with Defendant Galan regarding this request and granted her a permanent protective order. [*Id.* at ¶ 51] In November of 2022, Defendant Galan reported that Plaintiff again violated the protective order. [*Id.* at ¶ 52]

On November 29, 2022 a Summons and Complaint were filed in Case No. 22M152, which "was comingled at first" with Case No. 22M143. [*Id.* at ¶ 54] On that same day, and again on December 5, 2022, Plaintiff emailed Chief Justice of the Colorado Supreme Court Defendant Brian Dale Boatright and other unnamed federal authorities, attaching his criminal complaint and "Further Demands for Services and Sua Sponte Action to Restore My Family," but none of the recipients responded. [*Id.* at ¶¶ 53, 55]

On January 16, 2023, Plaintiff alleges that he was falsely arrested and imprisoned. [*Id.* at ¶ 59] Plaintiff never received a valid arrest warrant. [*Id.* at ¶ 60] On January 17, 2023, Defendant Judge Kramer held a bond hearing and entered a mandatory protective

order, prohibiting contact between Plaintiff and all parties in the State Domestic Relations Proceeding, "except contact as permitted in Gilpin County Case 15DR7." [*Id.* at ¶ 61] Plaintiff subsequently filed several motions demanding dismissal of the State Criminal Proceedings, which were denied. [*Id.* at ¶¶ 68-69] Plaintiff also challenges the validity of several other court orders in the State Criminal Proceedings. [*Id.* at ¶¶ 72-74, 80, 83-84]

On December 29, 2023, Plaintiff initiated this lawsuit. [#1] The Complaint asserts constitutional claims under 42 U.S.C. §§ 1981, 1983, 1985, and 1986. [*Id.* at ¶¶ 87-118] The Complaint also alleges a state law tort claim for intentional infliction of emotional distress. [*Id.* at ¶¶ 119-124] Plaintiff seeks unspecified compensatory and punitive damages. [*Id.* at ¶ 125]

On February 2, 2024, Defendant Gina Parker filed a Motion to Dismiss. [#20] On February 16, 2024, Defendants Eva Elaine Wilson, John Evan Kellner and Raif Edwin Taylor (collectively, the "District Attorney Defendants") filed a Motion to Dismiss. [#40] On February 19, 2024, Defendant Andrew Newton Hart filed a Motion to Dismiss. [#42] On February 29, 2024, Defendants Gary Michael Kramer ("Judge Kramer"), Palmer L. Boyette ("Judge Boyette"), Theresa Michelle Slade ("Judge Slade"), Michelle Ann Amico ("Judge Amico"), Brian Dale Boatright ("Justice Boatright"), and the State of Colorado (collectively, the "State Defendants") filed a Motion to Dismiss. [#45] On March 4, 2024, Defendant Steven James Lazar, pro se, filed a Motion to Dismiss. [#47] And on March 5, 2024, Defendant Rachel Zinna Galan, pro se, filed a Motion to Dismiss. [#49] Plaintiff has responded to the Motions [## 44, 54, 57, 58, 64, 65], and several Defendants have replied [## 56, 63, 66, 67].

II. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) empowers a court to dismiss a complaint for "lack of subject-matter jurisdiction." Fed. R. Civ. P. 12(b)(1). Dismissal under Rule 12(b)(1) is not a judgment on the merits of a plaintiff's case, but only a determination that the court lacks authority to adjudicate the matter. *See Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994) (recognizing federal courts are courts of limited jurisdiction and may only exercise jurisdiction when specifically authorized to do so). A court lacking jurisdiction "must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

Rule 12(b)(1) challenges are generally presented in one of two forms: "[t]he moving party may (1) facially attack the complaint's allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests." *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074 (10th Cir. 2004) (quoting *Maestas v. Lujan*, 351 F.3d 1001, 1013 (10th Cir. 2003)). When reviewing a facial attack on subject matter jurisdiction, the Court "presume[s] all of the allegations contained in the amended complaint to be true." *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002).

B. Federal Rule of Civil Procedure 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." In deciding a motion under

Rule 12(b)(6), a court must "accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to the plaintiff." *Cassanova v. Ulibarri*, 595 F.3d 1120, 1124 (10th Cir. 2010) (quoting *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009)). Nonetheless, a plaintiff may not rely on mere labels or 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 (2007).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Plausibility refers "to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'" *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). "The burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he or she is entitled to relief." *Id.* (quoting *Twombly*, 550 U.S. at 556). The ultimate duty of the court is to "determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed." *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007).

C. Pro Se Litigants

"A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)). "The *Haines* rule applies to all proceedings involving a pro se litigant." *Id.* at 1110 n.3. The

Court, however, cannot be a pro se litigant's advocate. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008). Moreover, pro se parties must "follow the same rules of procedure that govern other litigants." *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (quoting *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992)).

III. ANALYSIS

Defendants make several arguments in support of dismissal, but because the Court agrees that the *Younger* abstention or *Rooker-Feldman* doctrines apply [## 20 at 3; 45 at 4-6], the Court does not address Defendants' alternative arguments.

A. *Younger* Abstention

To the extent the State Domestic Relations or Criminal Proceedings remain open and pending,[2] then the abstention doctrine from *Younger v. Harris*, 401 U.S. 37 (1971), applies. A court lacks jurisdiction under the *Younger* abstention doctrine when there is an ongoing state court proceeding, the state court provides an adequate forum for raising the federal claims, and the proceedings fall within one of the three "exceptional circumstances" identified in *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 368 (1989). *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81-82 (2013); *see also Makeen v. Colorado*, No. 14-cv-3452-WJM-CBS, 2016 WL 8470186, at *4-5 (D. Colo. Sept. 16, 2016). "*Younger* abstention is jurisdictional" and thus must be addressed "at the outset." *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228-29 (10th Cir. 2004).

[2] "For purposes of [Younger], a state prosecution is considered to be pending if as of the filing of the federal complaint not all state appellate remedies have been exhausted." *Mounkes v. Conklin,* 922 F. Supp. 1501, 1511 (D. Kan. 1996).

All three *Younger* requirements are met here. First, Plaintiff is a party in a domestic relations case in the First Judicial District [#1 at ¶ 33] as well as several criminal cases in the Eighteenth Judicial District [*id.* at ¶¶ 25-26, 52]. And, although it is not entirely clear whether the domestic relations case or the criminal cases remain pending in state court, the Complaint's reference to a "crime spree" which "[is] ***continuing*** . . . mainly in Colorado's 18th Judicial District (Elbert County)" [*id.* at ¶¶ 25-26 (emphasis added); *see also id.* at ¶ 117 ("prevent the trio's ***continued*** color of law crimes in cases #22M143 and #22M152") (emphasis added)], and Plaintiff's request that the State of Colorado "halt all five[3] known-void cases" [*id.* at ¶ 117], indicate that the parties are still litigating the state cases. Thus, the first *Younger* requirement is met.[4]

Second, the state courts provide an adequate forum for raising Plaintiff's federal claims. "Unless state law clearly bars the interposition of the federal statutory and constitutional claims, a plaintiff typically has an adequate opportunity to raise federal claims in state court." *Winn v. Cook*, 945 F.3d 1253, 1258 (10th Cir. 2019) (quotation omitted). In the Responses to the Motions, Plaintiff does not address whether the State Court Proceedings are an adequate forum to hear the federal claims. [*See generally* ## 44, 54, 57, 58, 64, 65] Critically, the events discussed in the Complaint are the same events at the heart of the pending State Court Proceedings. [#1 at ¶¶ 33, 37, 52, 61, 77, 91, 94, 101, 117 (citing Case No. 2015DR7); *id.* at ¶¶ 37, 52, 70, 77, 92, 94, 117 (citing

[3] The five referenced actions are Colorado First Judicial District Case No. 2015DR7; Colorado First Judicial District Case No. 2022C36810; Colorado Eighteenth Judicial District Case No. 2022C59; Colorado Eighteenth Judicial District Case No. 2022M143; and Colorado Eighteenth Judicial District Case No. 2022M152. [*Id.* at ¶ 94]

[4] As detailed below, to the extent the State Proceedings are no longer being litigated, Plaintiff's claims are still not justiciable in this Court.

Case Nos. 2022M143 and 2022M152)] And, there is no reason to believe these claims will not be given full and proper consideration by the state courts. *See Capps v. Sullivan*, 13 F.3d 350, 354 n.2 (10th Cir. 1993) ("[F]ederal courts should abstain from the exercise of . . . jurisdiction if the issues raised . . . may be resolved either by trial on the merits in the state court or by other [available] state procedures.") (quotation omitted); *see generally Robb v. Connolly*, 111 U.S. 624, 637 (1984) (state courts have an obligation "to guard, enforce, and protect every right granted or secured by the constitution of the United States"). Thus, the second *Younger* requirement is met.

As to the third *Younger* requirement, with regard to the criminal cases, the Supreme Court "has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief." *Kelly v. Robinson*, 479 U.S. 36, 49 (1986) (citing *Younger*, 401 U.S. at 44-45); *see also Sprint Commc'ns*, 571 U.S. at 78; Winn, 945 F.3d at 1258 ("For the purposes of *Younger*, state criminal proceedings are viewed as a traditional area of state concern." (quotation omitted)). As to the allegations and claims relating to the domestic relations proceeding, the Court finds that divorce and child welfare are family law matters that implicate important state court interests from which federal courts generally should abstain.[5] *Alfaro*

[5] Plaintiff appears to conflate the abstention doctrines with the domestic relations exception. [## 44 at 8; 57 at 9, n.18] Here, the Court need not analyze whether the domestic relations exception applies. Even assuming Plaintiff is pursuing entirely independent constitutional claims, rather than requesting a modification to the child-custody decree, those claims plainly attack orders issued in the State Court Proceedings, which triggers *Younger* abstention. [*See* #1 at ¶ 41 ("all proceedings and decisions in all five of [Defendant Hart's] cases against [Plaintiff] are automatically void"); *id.* at ¶ 94 ("All orders, judgments, other decisions, proceedings, and actions in the following cases are automatically null and void by operation of law")]

v. Cnty. of Arapahoe, 766 F. App'x 657, 661 (10th Cir. 2019) (applying *Younger* to ongoing state-court divorce and child-custody proceedings); *Thompson v. Romeo*, 728 F. App'x 796, 798 (10th Cir. 2018) (holding that the district court properly applied *Younger* abstention to dismiss claims arising from purportedly unconstitutional orders entered in an ongoing state-court divorce and child-custody proceeding because the subject of domestic relations between a parent and child "belongs to the laws of the States and not the laws of the United States"); *Morkel v. Davis*, 513 F. App'x 724, 728 (10th Cir. 2013) (stating that the Tenth Circuit has "consistently applied *Younger* to child custody cases"); *Bryant v. Mclean*, No. 23-cv-00997-NYW-KAS, 2024 WL 809897, at *7-8 (D. Colo. Feb. 27, 2024) (applying *Younger* where Plaintiff alleged that judges, attorneys, and other participants in the child custody proceedings violated Plaintiff's constitutional rights), *report and recommendation adopted*, 2024 WL 1195326 (D. Colo. Mar. 20, 2024); *Everett v. Bollinger-Everett*, No. 1:22-cv-01133-CNS-SKC, 2023 WL 1805566, at *2 (D. Colo. Jan. 19, 2023) ("under the *Younger* abstention doctrine, the Court will not intervene in the state's on-going domestic relations proceedings"), *report and recommendation adopted*, 2023 WL 1801338 (D. Colo. Feb. 7, 2023); *Escalante v. Burmaster*, No. 23-3195-JWL, 2023 WL 5275117, at *3 (D. Kan. Aug. 16, 2023) (holding that *Younger* precluded the court from intervening in child custody proceedings, given that they are "an especially delicate subject of state policy" (quotation omitted)). Thus, the third *Younger* requirement is met. Accordingly, all three *Younger* requirements have been satisfied.

Although *Younger* abstention is mandatory once the conditions have been met, a federal court may nevertheless enjoin a criminal prosecution if it "was (1) commenced in bad faith or to harass, (2) based on a flagrantly and patently unconstitutional statute, or

(3) related to any other such extraordinary circumstance creating a threat of 'irreparable injury' both great and immediate." *Phelps v. Hamilton*, 59 F.3d 1058, 1063–64 (10th Cir. 1995) ("Phelps I"). These exceptions "provide for a very narrow gate for federal intervention." *Id.* at 1064 (quotation omitted). Plaintiff does not allege that there is an unconstitutional statute involved. Plaintiff likewise does not argue irreparable injury in his responses, and, in any event, the Tenth Circuit has "consistently refused to find an exception to *Younger* when the injury could ultimately be corrected through the pending state proceeding or on appeal." *Winn*, 945 F.3d at 1259. Plaintiff instead appears to allege a bad faith prosecution when asserting: "[a] known-fraudulent 'Summons and Complaint' was filed starting void case 22M152" [#1 at ¶ 54]; Defendants, "despite their knowledge . . . of nullity of all proceedings . . . continued . . . without jurisdiction or authority or even any regard for truth, to advance the known-false accusations and known-false and known-void charges against the known-innocent [Plaintiff]" [*Id.* at ¶ 56]; "[Plaintiff] was knowingly subjected to false arrest and false imprisonment" [*Id.* at ¶ 59]; a "known-void [b]ond [h]earing was held" [*Id.* at ¶ 61]; and "the trio were using Elbert County law enforcement and the 18th JD courts as a weapon against [Plaintiff] in retaliation for his criminal complaints against them" [*Id.* at ¶ 102].

The Tenth Circuit has identified three factors to consider in determining whether a prosecution is commenced in bad faith or to harass:

> (1) whether it was frivolous or undertaken with no reasonably objective hope of success;
> (2) whether it was motivated by the defendant's suspect class or in retaliation for the defendant's exercise of constitutional rights; and
> (3) whether it was conducted in such a way as to constitute harassment and an abuse of prosecutorial discretion, typically through the unjustified and oppressive use of multiple prosecutions.

Phelps I, 59 F.3d at 1065 (citations and footnotes omitted). Notably, "it is the plaintiff's 'heavy burden' to overcome the bar of *Younger* abstention by setting forth more than mere allegations of bad faith or harassment." *Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir. 1997) ("Phelps II") (quoting *Phelps I*, 59 F.3d at 1066).

Applied here, Plaintiff has not shown that a reasonable officer or prosecutor faced with similar circumstances would not have detained or brought charges against him. *Wilson*, 527 F. App'x at 744. Additionally, Plaintiff has offered no facts to support his broad sweeping statements like: "[Plaintiff] was knowingly subjected to false arrest and false imprisonment" [#1 at ¶ 59] or "the trio were using Elbert County law enforcement and the 18th JD courts as a weapon against [Plaintiff] in retaliation for his criminal complaints against them" [*Id.* at ¶ 102]. Instead, Plaintiff "offers nothing beyond his own assertions that these prosecutions were somehow wrongful." *Wilson*, 527 F. App'x at 744. At bottom, it appears that Plaintiff is unhappy with the parallel state actions, and he seeks to circumvent the state court judicial system by filing a lawsuit in federal court. "This is precisely what the *Younger* doctrine is intended to prevent." *El-Bey v. Lambdin*, No. 22-CV-00682-DDD-MDB, 2023 WL 2187478, at *6 (D. Colo. Feb. 23, 2023). The Court must therefore abstain from hearing Plaintiffs' claim for injunctive relief. [*See* # 1 at ¶ 32]

Plaintiff argues *Younger* is altogether inapplicable because the Complaint "seeks *only* money damages." [## 44 at 15 (emphasis in original); 57 at 40] "Although the original *Younger* holding was limited to the proposition that injunctive relief was subject to abstention, the Tenth Circuit has expanded the doctrine to include declaratory and monetary relief as well." *Flanders v. Snyder Bromley*, No. 09-cv-01623-CMA-KMT, 2010 WL 2650028, at *4 (D. Colo. June 30, 2010). Here, Plaintiff seeks compensatory and

punitive damages. [#1 at ¶ 125] The Tenth Circuit has held that "the *Younger* doctrine extends to federal claims for monetary relief when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." *D.L.*, 392 F.3d at 1228. In particular, the principles behind *Younger* extend to the situation where "a plaintiff who seeks only monetary damages could, once a money judgment is obtained, seek the additional relief of an injunction and could argue in state court that the federal judgment has preclusive effect." *Id.* Such is precisely the case here. A judgment in Plaintiff's favor in this case would enable Plaintiff to argue before the First or Eighteenth Judicial District courts that, for example, Defendants engaged in unconstitutional conduct because this Court had already determined that Plaintiff's constitutional rights were violated—indeed, for example, it would allow Plaintiff to argue to the presiding judge in the State Criminal Proceedings that Judge Boyette's or Judge Kramer's prior orders were void as violative of Plaintiff's constitutional rights. *Younger* counsels against just such a result.[6] Accordingly, to the extent the State Court Proceedings remain pending (as they appear from the Complaint to be), the Court finds that *Younger* abstention applies to all of Plaintiff's claims against Defendants. Thus, to the extent the State Court Proceedings remain pending, the Court respectfully RECOMMENDS that the district court abstain from deciding Plaintiff's action and that the Complaint be DISMISSED WITHOUT PREJUDICE. *Goings v. Sumner Cty. Dist. Attorney's Office*, 571 F. App'x 634, 639 (10th Cir. 2014)

[6] In the Complaint, Plaintiff appears to request injunctive relief as well, specifically requesting "a federal district court judge solely to oversee the administration of due process and to referee the trial by jury" in the state courts. [# 1 at ¶ 32]. This is exactly the type of interference that *Younger* prevents. *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) (noting supervision and interruption of state court proceedings to adjudicate assertions of noncompliance would indirectly accomplish the kind of interference that *Younger* sought to prevent).

("Under our precedent, *Younger*-abstention dismissals have been treated as roughly akin to jurisdictional dismissals and, accordingly, have been considered to be without prejudice." (emphasis omitted)).

B. *Rooker-Feldman*

Several Defendants also argue that the claims are barred pursuant to the *Rooker-Feldman* doctrine. [#42 at 2-5] The Court agrees to the extent the State Court Proceedings are no longer ongoing.

"The *Rooker–Feldman* doctrine establishes, as a matter of subject-matter jurisdiction, that only the United States Supreme Court has appellate authority to review a state-court decision."[7] *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074–75 (10th Cir. 2004) (footnote omitted). "The *Rooker–Feldman* doctrine precludes a losing party in state court who complains of injury caused by the state-court judgment from bringing a case seeking review and rejection of that judgment in federal court." *Miller v. Deutsche Bank Nat'l Trust Co. (In re Miller),* 666 F.3d 1255, 1261 (10th Cir. 2012). The doctrine is "confined to cases of the kind from which the doctrine acquired its name: cases 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. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

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[7] "The *Rooker–Feldman* doctrine is derived from 28 U.S.C. § 1257(a), [which] provides that only the Supreme Court has jurisdiction to hear appeals from final state court judgments," *Suasnavas v. Stover*, 196 F. App'x 647, 652 n.3 (10th Cir. 2006) (internal quotation omitted), and gets its name from two Supreme Court decisions: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The Tenth Circuit has "concluded that 'the type of judicial action barred by *Rooker–Feldman* [ ] consists of a review of the proceedings already conducted by the "lower" tribunal to determine whether it reached its result in accordance with law.'" *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182, 1193 (10th Cir. 2010) (quoting *Bolden v. City of Topeka*, 441 F.3d 1129, 1143 (10th Cir. 2006) (alterations in ex rel. Jensen)). "*Rooker–Feldman* does not bar federal-court claims that would be identical even had there been no state-court judgment; that is, claims that do not rest on any allegation concerning the state-court proceedings or judgment." *Id.* (quoting *Bolden,* 441 F.3d at 1145). The court has applied the *Rooker–Feldman* doctrine where the relief sought required the federal court to review and reject the state court judgment. *See id.* (*citing Mann v. Boatright*, 477 F.3d 1140, 1147 (10th Cir. 2007)). On the other hand, the court has refused to apply the doctrine when the federal suit would not reverse or otherwise undo the state court judgment. *See id.* (citing *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1238 (10th Cir. 2006)).

Applied here, the review and relief sought would require this Court to "review . . . the proceedings already conducted by the [state] tribunal to determine whether it reached its result in accordance with law." *Jensen*, 603 F.3d at 1193 (quotation omitted). Plaintiff directly challenges various orders entered by the state courts, alleging that these orders were a product of collusion or fraudulent. [#1 at ¶ 58 ("On January 4, 2023, according to the ROA, [Plaintiff's] fraudulent 'Arraignment' occurred on the known-false and known-void and comingled charges in 22M143 and 22M152"); *id.* at ¶ 101 ("The trio repeatedly refused to acknowledge the nullity, by operation of law, of [Defendant Galan's] known-fraudulent and ill-gotten protection order and therefore, by extension, the nullity of all three

18th JD cases"); #57 at 9 ("Defendant/suspect Gary Michael Kramer is one of the 18th JD judges who 'fixed' the three 18th JD cases (22C59, 22M143 & 22M152) against [Plaintiff] to aid the 'trio' in their crimes in Elbert County")] In order to determine the merits of these claims, the Court would be required to review the State Court Proceedings to determine whether the state courts' procedure and ultimate adverse judgment towards Plaintiff was the result of fraud and conspiracy or a proper interpretation of Colorado law and assessment of Plaintiff's claims. It is just this type of review that is prohibited by the *Rooker–Feldman* doctrine. *Jensen*, 603 F.3d at 1193; *see also Farris v. Burton*, 686 F. App'x 590, 592 (10th Cir. 2017) (applying *Rooker–Feldman* where the plaintiff's claims would require "a federal court . . . to review the [ ] state court proceedings to determine if the decision . . . was reached as a result of fraud or from a proper assessment of the claims"). For example, Plaintiff argues Defendant Judge Boyette improperly denied Plaintiff's motion requesting the charges be dismissed against him in Case No. 22M143. [#1 at ¶ 69] This claim (as the Court understands it) directly challenges the state court's application of state law, procedure, and local rules under the facts of Plaintiff's state-court case. Reviewing the merits of such a claim would also clearly "'consist[] of a review of the proceedings already conducted by the [state] tribunal to determine whether it reached its result in accordance with law,'" which is barred by the *Rooker–Feldman* doctrine. *Jensen*, 603 F.3d at 1193 (quoting *Bolden*, 441 F.3d at 1143).

As to the relief sought, Plaintiff seeks unspecified monetary damages. [#1 at ¶ 125] The entirety of the Complaint demonstrates that these damages arose from the allegedly improper judgments and/or orders issued in the State Court Proceedings. As a result, the claims for monetary damages are barred by *Rooker-Feldman*. *Mann*, 477 F.3d

at 1147 (finding the plaintiff's claims for monetary damages were also barred by *Rooker-Feldman* because they would require the federal judge to reject the state court's judgments and thus were "inextricably intertwined" with those judgments). Accordingly, to the extent the State Court Proceedings have concluded, the Court respectfully RECOMMENDS that the Motions be GRANTED and that the Complaint be DISMISSED WITHOUT PREJUDICE. *See Lambeth v. Miller*, 363 F. App'x 565, 566, 569 (10th Cir. 2010) (finding that dismissal for lack of subject matter jurisdiction on the basis of the *Rooker–Feldman* doctrine must be "without prejudice"); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) ("A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice.").

IV. CONCLUSION

For the foregoing reasons, regardless of whether the State Court Proceedings remain ongoing (which would implicate *Younger*) or have been completed (which would implicate *Rooker-Feldman*), the Court respectfully RECOMMENDS that the Motions [## 20, 40, 42, 45, 47, 49] be GRANTED and that the Complaint be DISMISSED WITHOUT PREJUDICE. *Gardner v. Schumacher*, 547 F. Supp. 3d 995, 1038-46 (D.N.M. 2021) (applying *Younger* to any claims that remained pending in state court and *Rooker-Feldman* to the extent all state proceedings had concluded).[8]

[8] Within fourteen days after service of a copy of this Recommendation, any party may serve and file written objections to the magistrate judge's proposed findings of fact, legal conclusions, and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Griego v. Padilla (In re Griego)*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the district court on notice of the basis for the objection will not preserve the objection for *de novo* review. "[A] party's objections to the magistrate judge's report and

DATED: May 1, 2024

BY THE COURT:

s/Scott T. Varholak
United States Magistrate Judge

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recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar *de novo* review by the district judge of the magistrate judge's proposed findings of fact, legal conclusions, and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings of fact, legal conclusions, and recommendations of the magistrate judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (holding that the district court's decision to review magistrate judge's recommendation *de novo* despite lack of an objection does not preclude application of "firm waiver rule"); *Int'l Surplus Lines Ins. Co. v. Wyo. Coal Refining Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (finding that cross-claimant waived right to appeal certain portions of magistrate judge's order by failing to object to those portions); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (finding that plaintiffs waived their right to appeal the magistrate judge's ruling by failing to file objections). *But see, Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (holding that firm waiver rule does not apply when the interests of justice require review).

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