United States District Court
Middle District of Florida
Jacksonville Division

ANGELA M. WALTON,

Plaintiff,

v. **No. 3:24-cv-581-MMH-PDB**

THE HONORABLE JOHN MERRETT ET AL.

Defendants.

Report and Recommendation[1]

I. Overview

The plaintiff, proceeding without a lawyer and without prepayment of fees, sues a former state circuit judge (John Merrett), two current or former assistant state attorneys (Diidre Wells and Jessica Trudeau), and a privately retained lawyer (Robert Davis). Docs. 1, 6, 9. Her lawsuit is based on her son's criminal case. In 2007, Judge Merrett accepted her son's pleas of guilty to three felonies and sentenced him to serve consecutive sentences totaling 175 years of imprisonment, which the plaintiff calls a "Civil Death Penalty." Doc. 1 ¶¶ 12, 18. She purports to bring a claim or claims in both her individual capacity and as a personal representative of the estate of her alive but incarcerated son, *id.* at 1, and against the defendants in their individual and official capacities, *id.* ¶¶ 8, 41. She brings a claim under 42 U.S.C. § 1983, contending the defendants

[1]Citations to page numbers are to the page numbers automatically generated by the electronic filing system.

violated her right under the Fourteenth Amendment's Due Process Clause to parental liberty in the care, custody, and control of her son. Doc. 1 ¶¶ 1, 43. She might be trying to bring a claim under the Florida Wrongful Death Act, Fla. Stat. §§ 768.16–768.26, as well, but her pleading is unclear in this regard.

Reviewing the plaintiff's pleading for subject-matter jurisdiction and under the dismissal provision of the in forma pauperis statute, 28 U.S.C. § 1915(e)(2)(B), the undersigned recommends dismissal.

II. Pleading

A. Alleged Facts

These facts are from the plaintiff's pleading, Doc. 1, which includes five exhibits: the transcript of the plea hearing from her son's criminal case, Doc. 1-2; a plea form signed by her son, by Davis as his lawyer, and by Judge Merrett, Doc. 1-3; the transcript of the sentencing hearing from her son's criminal case, Doc. 1-4; and part of this Court's opinion denying a habeas petition filed by her son, Doc. 1-5; *see Ashley v. Sec'y, Fla. Dep't of Corr.*, No. 3:15-cv-7-MMH-JRK, 2017 WL 5443145, at *13–14 (M.D. Fla. Nov. 14, 2017).[2]

The State of Florida charged the plaintiff's son with two counts of armed robbery and one count of armed burglary, each alleged to have occurred in the

[2]Approximately 7 pages from the 134-page transcript of the sentencing hearing are not in the plaintiff's exhibit. *See* Doc. 1-4. The complete transcript is in the record of the habeas action brought in this Court. *See* Doc. 15-1 at 126–260 (Tr. 106–240) in No. 3:15-cv-7-MMH-JRK.

In an "Index to Appendix," the plaintiff mistakenly describes part of this Court's opinion denying the habeas petition as "11th Cir. Ct. Ruling." Doc. 1-1 at 1; *compare* Doc. 1-5 at 2–6, *with* Doc. 17 at 29–35 in No. 3:15-cv-7-MMH-JRK.

second half of 2006 when he was 19 years old and living with the plaintiff.[3] Doc. 1 ¶ 10. The plaintiff hired Davis to represent her son. *Id.* ¶ 11 n.3.

Davis informed the plaintiff that he was friends with Judge Merrett and her son would "only get 5 to 7 years by entering an open plea to the court."[4] *Id.* ¶¶ 11, 60. Assistant State Attorney Wells prepared a plea agreement between the State Attorney's Office and the plaintiff's son. *Id.* ¶ 13; Doc. 1-3. "[A]s part of the negotiation," the plaintiff's son agreed (1) "to acknowledg[e] that the plea [was] to his advantage, thus, rendering the plea freely and voluntarily entered with the understanding that any early release of any sort was not part of the plea agreement and was entirely within the discretion of the State Attorney's Office" and (2) "the form represents the sole and complete agreement between" him and the State of Florida. Doc. 1 ¶ 13; Doc. 1-3. Judge Merrett, Davis, or Assistant State Attorney Wells "provided a time frame" during which the

[3]In the record in the habeas action brought in this Court, a doctor wrote to the assistant public defender representing the plaintiff's son (his lawyer before Davis) in response to a request for a psychiatric evaluation. *See* Doc. 15-1 at 67–71 (Tr. 56–60) in No. 3:15-cv-7-MMH-JRK. In describing the "social history" of the plaintiff's son, the doctor states, "There were numerous runaways from the home, reasons not assigned other than related to drugs. He moved out fairly early and would stay 'everywhere—go where I wanted to go.' By age fifteen, he was into the use of drugs and at age sixteen he was committed to the detention facility, first at Stark and then Tallahassee each placement." *Id.* at 68 (Tr. 57). Construing the plaintiff's allegations in the pleading in this action as true, the undersigned presumes that, by the time her son had allegedly committed the offenses at age 19, he had resumed living with the plaintiff.

[4]In a habeas petition filed in the state court and in the habeas petition filed in this Court, the plaintiff's son claimed his defense counsel had been ineffective by advising him the state court would impose a sentence of no more than 20 years of imprisonment—the mandatory minimum for one of the armed robbery offenses—if he entered an open plea. Doc. 17 at 3–4 in No. 3:15-cv-7-MMH-JRK. Construing the plaintiff's allegations in the pleading in this action as true, the undersigned presumes that the plaintiff's son was told different things about the potential sentence or sentences he would receive.

plaintiff's son could ask the State Attorney's Office to exercise "discretion for his early release." Doc. 1 ¶ 13.

In August 2007, the plaintiff attended a plea hearing. *Id.* ¶ 11. Davis informed Judge Merrett that the plaintiff's son was "entering a plea straight up to the Court." Doc. 1-2 at 5. Judge Merrett asked the plaintiff's son, "Do you understand that you face a maximum sentence of life on each of the counts with which you are charged," and the plaintiff's son answered, "Yes, sir." *Id.* at 7. Assistant State Attorney Wells interjected, "And, Judge, if I may, on Counts 2 and 3 there is a ten-year minimum mandatory, and on Count 1 there is a 20-year minimum mandatory." *Id.* Judge Merrett asked the plaintiff's son, "You understand your minimum sentence is 20 years," and he answered, "Yes, sir." *Id.* The plaintiff's son pleaded guilty to the three charges. *Id.* at 5. Judge Merrett found factual bases for the pleas based on an arrest affidavit and accepted the pleas, finding the plaintiff's son was pleading guilty "freely, voluntarily, and knowingly with full knowledge and understanding of the nature and consequences of the plea[s]." Doc. 1 ¶¶ 12, 60. The plaintiff's son was 20 years old at the time of his pleas. Doc. 1-2 at 7.

The sentencing hearing occurred in September 2007, when the plaintiff's son was still 20 years old.[5] Doc. 1 ¶ 9; Doc. 1-2 at 7; Doc. 1-4 at 2, 43, 99. Davis presented the testimony of six witnesses: the plaintiff; a friend of the plaintiff who had guided the plaintiff's son; an aunt, a grandmother, and a former

[5]The transcript of the sentencing hearing states the hearing occurred on "September 21, 2008, at 1:25 p.m." Doc. 1-4 at 2. The year is a typographical error. The plaintiff alleges that the hearing occurred on September 21, 2007, Doc. 1 ¶ 14, and the record in the habeas action filed in this Court confirms that the hearing occurred on September 21, 2007, *see* Doc. 15-1 at 117 in No. 3:15-cv-7-MMH-JRK.

teacher or counselor of the plaintiff's son; and a doctor who had evaluated the plaintiff's son. Doc. 1 ¶ 14; Doc. 1-4 at 4, 6–107. The testimony included that the plaintiff's son had suffered childhood trauma, had been diagnosed in school as emotionally handicapped, and had been placed in "exceptional student education." Doc. 1-4 at 44–102. According to the plaintiff, the defendants misled her into believing "that such mitigating testimony was necessary to support the imposition of a sentence below the Criminal Punishment Code." Doc. 1 ¶ 14.

Assistant State Attorney Trudeau, filling in for Assistant State Attorney Wells, Doc. 1-4 at 6, presented the testimony of a victim, who testified he had been driving the plaintiff's son in a taxi when the plaintiff's son pointed a gun close to the back of his head, demanded his cellphone and money, discharged a bullet that grazed his leg, took his cellphone and money, and fled, *id.* at 108–18.

Davis argued that the plaintiff's son, while incarcerated, could obtain his GED, drug treatment, psychological treatment, and vocational training and could become a productive citizen. *Id.* at 119–20. Davis argued that the plaintiff's son had been deprived of the tools needed to succeed and had been "victimized and marginalized" by people who had taken advantage of him, knowing of his limited abilities. *Id.* at 119. Davis stated that the plaintiff's son did not appear eligible for a "youthful offender adjudication" because he had previously received one but should receive a "downward departure" based on the doctor's testimony that he was still developing. *Id.* at 120.

Assistant State Attorney Trudeau argued the plaintiff's son "is not a victim of society" and instead "victimizes society." *Id.* at 121. She stated, "And it's frustrating and it's sad to see his family, who no doubt is lovely—they seem

to … really care for this defendant, but the problem is he just simply doesn't care." *Id.* She asked Judge Merrett to impose, at a minimum, the minimum prison terms for each offense (20 years, 10 years, and 10 years) consecutively. *Id.* at 128–29.

Before Judge Merrett pronounced the sentence, Assistant State Attorney Trudeau and Davis requested a sidebar meeting. *Id.* at 129. Judge Merrett left the bench and "sat literally on the steps," and he and the lawyers looked at the Florida Rules of Criminal Procedure to determine if the plaintiff's son was eligible for sentencing as a youthful offender.[6] Doc. 1 ¶¶ 17, 61; Doc. 1-5 at 5. Judge Merrett commented, "Well, we got three separate incidents on three separate dates, so how do you view that he's going to be eligible as a youthful offender, being we have three separate dates? And if you're going to argue for a youthful offender, then you have to show remorse." Doc. 1-5 at 5. Judge Merrett stated, "Every time I've seen him in court here, I haven't seen a whole lot of remorse, because he doesn't act like it. The way he's been acting, I don't know as though he would." *Id.* Davis responded, "Your Honor, that's the whole reason why I brought in [the doctor], and I presented testimony as to mitigation. I brought in his school counselor to show … that he doesn't completely understand, comprehend, the same way that a lot of other people do, and he doesn't completely understand the ramifications of, how do I want to say it, to be held accountable for his actions. He doesn't comprehend it in the way you and I may." *Id.*; Doc. 1 ¶¶ 17, 61.

[6]The plaintiff's recitation of the sidebar meeting is from this Court's opinion denying her son's petition for habeas relief, which was from a post-conviction evidentiary hearing conducted in state court. *See* Doc. 1-5; *see also* Doc. 15-3 at 126–27 (Tr. 260–61) in No. 3:15-cv-7-MMH-JRK.

Back on the record, Assistant State Attorney Trudeau, erring "on the side of caution," opined that the plaintiff's son appeared eligible for youthful offender adjudication because she saw no specific previous youthful offender adjudication but argued that the judge, in his discretion, should decline to sentence him as a youthful offender. Doc. 1-4 at 129–30.

Just before pronouncing the sentence, Judge Merrett stated:

> I have heard extensive testimony, and I believe it, to the effect that Mr. Ashley is easily led and that his motivation for wrongdoing was to obtain acceptance and recognition from his companions. However, except for crimes of rage or revenge, every crime is committed as a means to obtain something desired by the criminal.
>
> I wish to make it clear that I do not believe for a minute that society has any obligation to provide structure and guidance to its members. That is the duty of families. But even if society did have such an obligation, there comes a point beyond which society cannot afford to consider what is best for a given criminal.
>
> Mr. Ashley [the plaintiff's son], you crossed that point some time ago, I think. The crimes to which you have plead[ed] guilty are heinous crimes. They are predicated on terror, on dehumanizing the victim by reducing him to a state of helplessness. While you are a young man, you have nonetheless declared in a number of ways that you are prepared at least to live as a man. You have made a baby, and that is the business of men. You carried a gun, and that is the business of men. And you used that gun to terrorize people and to steal the fruits of their labor. That is the work of very bad men.
>
> It appears that but for you, the balance of your family are fine people, and the only regret that I have concerning the sentence I'm about to impose is the pain that it will inflict on them. But I console myself with the thought that but for your deliberate and knowing behavior, I would have had no opportunity to do so.

Id. at 130–31. Judge Merrett proceeded to sentence the plaintiff's son to serve consecutive terms of imprisonment of 75 years for one armed robbery, 50 years

for the second armed robbery, and 50 years for the armed burglary, for a total of 175 years. Doc. 1 ¶ 18; Doc. 1-4 at 132.

The plaintiff's son unsuccessfully challenged the judgment, the sentences, or a combination of those by filing more than a dozen motions, appeals, etc.:

> (1) a motion to correct a sentencing error in the state trial court, Doc. 1 ¶¶ 19, 20;
>
> (2) a direct appeal in the state appellate court, *id*. ¶¶ 21, 22;
>
> (3) a motion for post-conviction relief in the state trial court, *id*. ¶¶ 23–25;
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> (4) an appeal of the denial of the post-conviction motion in the state appellate court, *id*. ¶ 26;
>
> (5) a motion to correct an illegal sentence in the state trial court, *id*. ¶ 27;
>
> (6) an appeal of the denial of the motion to correct an illegal sentence in the state appellate court, *id*. ¶ 28;
>
> (7) an application for a writ of habeas corpus in the state trial court, *id*. ¶ 29;
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> (8) an application for a writ of habeas corpus in this Court, *id*. ¶ 30;
>
> (9) an appeal of the denial of the application in the United States Court of Appeals for the Eleventh Circuit, *id*.;
>
> (10) a petition for a writ of certiorari in the United States Supreme Court, *id*.;
>
> (11) a successive motion for post-conviction relief in the state court, *id*. ¶¶ 31, 32;

(12) an appeal of the denial of the successive motion for post-conviction relief in the state appellate court, *id.* ¶¶ 33, 34;

(13) a petition to file a successive application for a writ of habeas corpus in the Eleventh Circuit, *id.* ¶ 35; and

(14) another motion to correct an illegal sentence in the state trial court, *id.* ¶¶ 36, 37.

B. Claim or Claims

The plaintiff titles her pleading, "42 U.S.C. § 1983 CIVIL RIGHTS COMPLAINT," Doc. 1 at 1, and states, "[T]his Complaint [is] pursuant to 42 U.S.C. [§] 1983," *id.*, and, "This is a civil action authorized by 42 U.S.C. [§] 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States," *id.* ¶ 1. She contends, "[T]he 'wrongful civil death' of her minor son was the result of unconstitutional deprivations of equal protection and due process of her rights." *Id.* ¶ 40. In a section of her pleading titled "ARGUMENT," she discusses the constitutional right to parental liberty in a child's care, custody, and control. *Id.* ¶¶ 43–45, 53. She asserts,

> It is against this backdrop that this Court should analyze Plaintiff's claim against [the defendants] for a violation of the substantive due process clause of the Fifth and Fourteenth Amendment pursuant to 42 U.S.C. [§] 1983, denying her "liberty interest" right to care, custody, and control of her minor son, and severe emotional distress and mental anguish and other pain and suffering caused by her son's "wrongful civil death" under the color of state law.

Id. ¶ 46. The plaintiff also discusses qualified immunity and states, "At the time of the commission of the crimes and sentencing in [her] minor son's case Florida law was well settled on sentencing a young person as a youthful offender and sentencing pursuant to the 10/20/life statute." *Id.* ¶¶ 54–56. According to her,

> The Defendants Merrett, Wells, Trudeau and Davis operated under a non-statutory scheme to deny Plaintiff's minor son[] a due process of law consideration of the Youthful Offender Act and waiving of the 10/20/Life statute, which as an offender as Plaintiff's minor son and other characteristics which might halt at the beginning what could otherwise be a lifetime of continuing crime and related problems. All four (4) Defendants were in the best position to determine if Plaintiff's minor son could benefit from the most desirable treatment for the Youthful Offender Act, instead took a stand of vengeance against Plaintiff's minor son and decided to impose[] a "wrongful civil death" and *fought tooth* and *nail* to uphold their wrongdoing.

Id. ¶ 56 (emphasis in original). She contends Judge Merrett and Assistant State Attorney Trudeau knew the law and could exercise their discretion consistent with the ethical and professional rules but violated those rules, with Assistant State Attorney Trudeau arguing "in an unprofessional manner" at the sentencing hearing and Judge Merrett appearing to "be even more agitated" than Assistant State Attorney Trudeau. *Id.* ¶ 57.

Throughout the pleading, the plaintiff refers to her son as a "minor" based on the Florida Wrongful Death Act's definition of "minor children" (i.e., "children under 25 years of age, notwithstanding the age of majority," Fla. Stat. § 768.18). Doc. 1 at 4 n.1. The plaintiff states that she "alleges a state 'wrongful civil death' cause of action against" each of the defendants. *Id.* ¶ 41. She quotes from the Code of Judicial Conduct and The Florida Bar's Rules of Professional Conduct, and, in the "ARGUMENT" section, discusses the Florida Wrongful Death Act. *Id.* at 16–17 nn.7–10 & ¶¶ 47–52.

Based on a February 2, 2024, order as the last order by the state court denying her son post-conviction relief, the plaintiff contends, "This final action of redress constitute[s] exhaustion of state's remedies and the statute of

limitations for a 'Wrongful Death' is two (2) years from which the cause of action accrued …. Thus, this Complaint is timely filed." *Id.* ¶¶ 37, 38.

The plaintiff concludes,

> Due to Plaintiff's minor son being only twenty (20) years old at the time the Defendants herein wrongly put him to "civil death" by imposing a de facto life sentence upon him with no eligibility for parole. Plaintiff contends that the "wrongful civil death" of her minor son was the result of unconstitutional depravations of equal protection and due process of her rights. …
>
> Plaintiff argues that § 1983 is deficient for failing to expressly provide for her, as a surviving family member, to recover in her individual capacity for damages she personally suffered as a result of the deprivation of her constitutional rights. While Plaintiff recognizes that state law generally fills the gap where § 1983 is silent regarding remedies, she says that this Court should not look to state law to remedy the deficiency in this case because Florida law's failure to recognize such claims in the wrongful death context fails to fully effectuate the purposes of § 1983, concerning a parent's liberty interest for her minor child without the assistance of the dictionary definition of the words "Wrongful" and "Death."

Id. ¶¶ 40, 63 (footnotes omitted).

C. Demand

The plaintiff demands a trial by jury. Doc. 1 ¶¶ 64, 69. She demands a declaration that the defendants' "acts and omissions" violated her "rights under the Constitution and laws of the United States." *Id.* ¶¶ 1, 40, 65. She demands preliminary and permanent injunctions enjoining the defendants from "seeking to condemn minor children" (defined as a person under 25 years old) to civil deaths (effective life sentences), "thereby denying" her and other parents' "liberty interest rights." *Id.* ¶¶ 1, 40, 66. She demands compensatory

damages of $2.5 million from each defendant for her "severe emotional distress and mental anguish" and "other pain and suffering" resulting from her son's "wrongful civil death" and her loss of companionship with him. *Id.* ¶¶ 1, 40, 67. She demands punitive damages of $5 million from each defendant. *Id.* ¶¶ 1, 68. And she demands her costs, fees, and any other relief the Court considers "just, proper and equitable." *Id.* ¶¶ 70–72.

III. Law and Analysis

A. The Liberal Pleading Standard

"Pleadings must be construed so as to do justice." Fed. R. Civ. P. 8(e). Thus, a court must liberally construe a pleading drafted by a litigant without a lawyer and hold it to a less stringent standard than one drafted by a lawyer. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

Liberal construction means a court must "look beyond the labels" and "focus on the content and substance of the allegations" to determine if a cognizable remedy is available. *Torres v. Mia.-Dade Cnty.*, 734 F. App'x 688, 691 (11th Cir. 2018). Construing a pleading liberally avoids an unnecessary dismissal and an inappropriately stringent application of a formal labeling requirement and creates "better correspondence" between the substance of the claim and its legal basis. *Castro v. United States*, 540 U.S. 375, 381–82 (2003).

Because the plaintiff is proceeding without the assistance of a lawyer, the Court must construe her pleading liberally. A liberal construction of her pleading shows she is trying to sue the defendants based on their respective

roles in her son's 175-year sentence, which resulted in the separation of her from her son, beginning when he was 20 years old. *See* Doc. 1 ¶¶ 9–41.

B. Article III Standing

If a court determines it lacks jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3). "[N]o unyielding jurisdictional hierarchy" or mandatory "sequencing of jurisdictional issues" exists. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578, 584 (1999).

"Under the Federal Rules of Civil Procedure, a dismissal for lack of jurisdiction operates as a dismissal without prejudice if the order does not indicate otherwise." *Dupree v. Owens*, 92 F.4th 999, 1008 (11th Cir. 2024) (citing Fed. R. Civ. P. 41(b)). "However, even if a dismissal is presumptively without prejudice, it is a best practice for district courts to err on the side of clarity and indicate whether prejudice has attached." *Id.*

Federal jurisdiction is limited to actual cases or controversies under Article III. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). To establish a case or controversy, a plaintiff must have standing to bring a claim. *Id*. at 338. Standing "is a threshold jurisdictional question[.]" *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 923 (11th Cir. 2020) (en banc).

To have standing to bring a claim, a plaintiff must allege facts showing she "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id*. "Redressability is established when a favorable decision would amount to a significant increase in the likelihood that the plaintiff would

obtain relief that directly redresses the injury suffered." *Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1303–04 (11th Cir. 2011). "[A]t the pleading stage, the plaintiff must clearly allege facts demonstrating each element." *Spokeo*, 578 U.S. at 338 (internal quotation marks, quoted authority, and alteration omitted).

A plaintiff must show "standing for each claim [s]he seeks to press" and "for each form of relief" sought. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008). A plaintiff demanding declaratory or injunctive relief must prove "a real and immediate threat of future injury" and "a sufficient likelihood that [s]he will be affected by the allegedly unlawful conduct in the future." *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305–06 (11th Cir. 2004) (internal quotation marks and quoted authority omitted).

To the extent the plaintiff attempts to bring a claim for her son's injuries rather than her own, to obtain a declaration the defendants acted unlawfully, or to obtain an injunction enjoining the defendants from trying to condemn anyone under 25 years old to "civil death," *see* Doc. 1 ¶¶ 1, 40, 66, she has no Article III standing to bring—and the Court thus has no jurisdiction over—the claim and demands, warranting dismissal of them without prejudice.

C. Review Under the In Forma Pauperis Statute

1. Failure to State a Claim on Which Relief May be Granted

Under the dismissal provision of the in forma pauperis statute, "the court shall dismiss the case at any time if the court determines that … the action … fails to state a claim on which relief may be granted[.]" 28 U.S.C.

§ 1915(e)(2)(B)(ii). To decide if a pleading by a plaintiff proceeding under the in forma pauperis statute fails to state a claim on which relief may be granted, a court applies Rule 12(b)(6), Federal Rules of Civil Procedure. *Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008).

For dismissal under Rule 12(b)(6), a court may consider only the complaint allegations, anything attached to the complaint, anything extrinsic to the complaint that is central to the claim and without challenge to its authenticity, and any judicially noticeable facts. *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 811 (11th Cir. 2015). The court must accept factual allegations as true and construe them in the light most favorable to the plaintiff. *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267, 1275 (11th Cir. 2012). And the court must draw all reasonable inferences in the plaintiff's favor. *Omar ex rel. Cannon v. Lindsey*, 334 F.3d 1246, 1247 (11th Cir. 2003). To survive dismissal under Rule 12(b)(6), a complaint must include facts, accepted as true, that state a claim "that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That standard asks for less than a probability but "more than a sheer possibility that a defendant has acted unlawfully." *Id.*

A court "may dismiss a complaint for failure to state a claim [under Rule 12(b)(6)] if an affirmative defense appears on the face of the complaint." *Murphy v. DCI Biologicals Orlando, LLC*, 797 F.3d 1302, 1305 (11th Cir. 2015).

Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States … to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other

> proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. …

42 U.S.C. § 1983. Section 1983 "basically seeks to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide related relief." *Richardson v. McKnight*, 521 U.S. 399, 403 (1997) (quoted authority, internal quotation marks, and emphasis omitted).

An official-capacity suit is another way of pleading an action against the entity of which the officer is an agent. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Ky. v. Graham*, 473 U.S. 159, 165 (1985). A suit against a Florida circuit judge in his official capacity is a suit against the State of Florida. *Badillo v. Thorpe*, 158 F. App'x 208, 211–13 (11th Cir. 2005). Likewise, a suit against a Florida assistant state attorney in her official capacity is a suit against the State of Florida. *Swope v. Krischer*, 783 So. 2d 1164, 1168–69 (Fla. 4th DCA 2001); *Hatten v. Decopai*, No. 2:13-CV-829-JES-UAM, 2013 WL 6231256, at *2 (M.D. Fla. Dec. 2, 2013); *see also Williams v. Florida*, No. 1:23CV16-AW-HTC, 2023 WL 2760437, at *2 (N.D. Fla. Feb. 23, 2023) ("[A] suit against the State Prosecutor and the Assistant State Attorney in their official capacities is the equivalent of a suit against the State of Florida, the attorneys' employer."), *report and recommendation adopted*, No. 1:23-CV-16-AW-HTC, 2023 WL 2761294 (N.D. Fla. Apr. 3, 2023); *Rich v. City of Jacksonville*, No. 3:09-cv-454-MMH-MCR, 2010 WL 4403095, at *3 (M.D. Fla. Mar. 31, 2010) ("[T]he State Attorney is an 'arm of the state' and thus falls within the ambit of the State's Eleventh Amendment immunity."); *Perez v. State Attorney's Off.*, No. 608CV-1199-GAP-KRS, 2008 WL 4539430, at *2

(M.D. Fla. Oct. 8, 2008) ("Florida courts have held that the State Attorney and the State Attorney's Office is an 'arm of the state,' for purposes of the Eleventh Amendment.").[7]

Neither states nor state officials sued in official capacities are "persons" subject to § 1983 liability for damages. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Moreover, § 1983 "excludes from its reach merely private conduct, no matter how discriminatory or wrongful." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoted authority and internal quotation marks omitted). A private party acts under the color of state law only if: (1) the state "coerced or at least significantly encouraged" the challenged action; (2) the private party "performed a public function that was traditionally the exclusive prerogative of the [s]tate"; or (3) the state "insinuated itself into a position of interdependence with the private part[y such] that it was a joint participant in the enterprise[.]"*Charles v. Johnson*, 18 F.4th 686, 694 (11th Cir. 2021).

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[7]The Eleventh Circuit "uses four factors to determine whether an entity is an 'arm of the State' in carrying out a particular function: (1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity. *Manders v. Lee*, 338 F.3d 1304, 1309 (11th Cir. 2003).

The citied cases holding that Florida circuit judges and Florida assistant state attorneys sued in their official capacities are suits against the State of Florida are persuasive. The Eleventh Circuit thoroughly analyzed the factors with respect to a Florida circuit judge in *Badillo*, 158 F. App'x at 211–13, and this Court thoroughly analyzed the factors with respect to a Florida state attorney (which, by extension, applies to his or her employees) in *Farrell v. Woodham*, No. 2:01-CV-417-JES-DNF, 2002 WL 32107645, at *2–3 (M.D. Fla. May 29, 2002); *see also* Fla. Stat. § 27.01 ("There shall be a state attorney for each of the judicial circuits, who shall be elected at the general election by the qualified electors of their respective judicial circuits *as other state officials are elected*, and who shall serve for a term of 4 years." (emphasis added)).

"Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (internal quotation marks and quoted authority omitted). "The first step in any such claim is to identify the specific constitutional right allegedly infringed." *Id.* "The validity of the claim must then be judged by reference to the specific constitutional standard which governs that right[.]" *Graham v. Connor*, 490 U.S. 386, 394 (1989).

Under the Fourteenth Amendment, no state can "deprive any person of life, liberty, or property, without due process of law[.]" U.S. CONST. amend. XIV § 1. The Supreme Court has "long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, guarantees more than fair process." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (internal quotation marks and quoted authority omitted).[8] "The Clause also includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.* (internal quotation marks and quoted authority omitted). Due process protects

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[8]"The fifth amendment to the United States Constitution restrains the federal government, and the fourteenth amendment, section 1, restrains the states, from depriving any person of life, liberty, or property without due process of law." *Buxton v. City of Plant City*, 871 F.2d 1037, 1041 (11th Cir. 1989).

The plaintiff cites the Fifth Amendment in her pleading, *see* Doc. 1 ¶ 46, but does not complain about the federal government or any federal actor. She states no claim under the Fifth Amendment.

The Equal Protection Clause of the Fourteenth Amendment provides, "No state shall … deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV § 1. The clause's "central purpose" is to prohibit "official conduct discriminating on the basis of race." *Washington v. Davis*, 426 U.S. 229, 239 (1976).

The plaintiff cites the Equal Protection Clause in her pleading, *see* Doc. 1 ¶ 40, but does not allege any facts suggesting discrimination against her or other unequal treatment of her. She states no claim under the clause.

enumerated and unenumerated substantive rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

In *Daniels v. Williams*, the Supreme Court held that the "Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." 474 U.S. 327, 328 (1986) (emphasis omitted). The Court explained, "Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property. … This history reflects the traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta, … was intended to secure the individual from the arbitrary exercise of the powers of government[.]" *Id.* at 331 (internal quotation marks and quoted authority omitted; emphasis in *Daniels*).

"The liberty interest … of parents in the care, custody, and control of their children … is perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court. *Troxel*, 530 U.S. at 65. "[T]his longstanding liberty interest has traditionally applied to either state actions directed at the family relationship, such as visitation or child custody, or state regulation of decisions within the ambit of parental control, such as educational decisions, the choice of living arrangements, and the choice to have children." *Chambers v. Sanders*, 63 F.4th 1092, 1096–97 (6th Cir. 2023) (citing cases).

In *Robertson v. Hecksel*, the Eleventh Circuit cautioned, "[I]n § 1983 cases grounded on alleged parental liberty interests, [courts] are venturing into the murky area of unenumerated constitutional rights." 420 F.3d 1254, 1256 (11th Cir. 2005) (quoted authority omitted; alteration in *Robertson*).

"When this happens," the Eleventh Circuit explained, the court's "first task is to determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all." *Id.* (internal quotation marks and quoted authority omitted). The Eleventh Circuit warned that the court "should tread lightly because [b]y extending constitutional protection to an asserted right or liberty interest, [the court], to a great extent, place[s] the matter outside the arena of public debate and legislative action." *Id.* (internal quotation marks and quoted authority omitted; one alteration in *Robertson*). Thus, the Eleventh Circuit explained, the court must "exercise the utmost care whenever" the court is "asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the" court. *Id.* (internal quotation marks and quoted authority omitted).

Applying those principles, the Eleventh Circuit affirmed the dismissal of a mother's § 1983 claim against an officer and the City of Gainesville, Florida, after the officer shot and killed her 30-year-old son during a traffic stop, holding, "the Fourteenth Amendment's substantive due process protections do not extend to the relationship between a mother and her adult son[.]" *Id.* at 1255. The Eleventh Circuit emphasized that "the Supreme Court cases extending liberty interests of parents under the Due Process Clause focus on relationships with minor children." *Id.* at 1257 (internal quotation marks, quoted authority, and emphasis omitted).

The Eleventh Circuit added, "Although we hold the asserted right does not exist, even if we agreed with [the mother], we still must remember that the 'Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.'" *Id.* at 1259

n.5 (quoting *Daniels*, 474 U.S. at 328). "Nowhere," the Eleventh Circuit explained, "has [the mother] alleged [the officer]'s actions constituted more than negligence concerning her rights—mere causation is not enough to satisfy *Daniels*." *Id.*; *see also Sanders*, 63 F.4th at 1095 (affirming dismissal of children's § 1983 claim against a detective and the City of Detroit, Michigan, alleging a violation of their substantive due process right to family integrity from their wrongfully convicted father's 32-year incarceration because the children failed to allege facts making plausible that the detective had acted with a culpable state of mind directed at interfering with the parent-child relationship); *Chambers ex rel. Chambers v. Sch. Dist. Of Phil. Bd. Of Educ.*, 587 F.3d 176, 192 (3d Cir. 2009) (affirming judgment against parents on their § 1983 claim against a school district alleging a violation of their due process right to their daughter's companionship and association because the parents failed to allege or adduce evidence that the school district deliberately sought to harm their relationship with their child); *Russ v. Watts*, 414 F.3d 783, 787–91 (7th Cir. 2005) (affirming judgment against the parents of an adult son fatally shot by a police officer and overruling precedent "insofar as it recognized a constitutional right to recover for the loss of the companionship of an adult child when that relationship is terminated as an incidental result of state action"); *Trujillo v. Bd. of Cnty. Comm'rs,* 768 F.2d 1186, 1187, 1190 (10th Cir. 1985) (affirming dismissal of a mother and daughter's § 1983 action for the wrongful death of their son and brother while he was in state custody because the mother and daughter failed to allege that the defendants had intended to deprive them of their protected relationship with the decedent); *Valdivieso Ortiz v. Burgos,* 807 F.2d 6, 7, 9 (1st Cir. 1986) (affirming judgment against

family members of an inmate who had been beaten to death by guards because they showed only an "incidental deprivation" of the familial relationship).

The Eleventh Circuit concluded:

> Our holding that a parent does not have a constitutional right of companionship with an adult child is in no way meant to minimize the loss of an adult child as compared to a minor child. The loss of a child at any age, under any circumstances, is one of the most difficult experiences a parent can endure. While the parent/adult child relationship is an important one, the Constitution does not protect against all encroachments by the state onto the interests of individuals. Instead, it is the province of the Florida legislature to decide when a parent can recover for the loss of an adult child. We will not circumvent its authority through an unsupported reading of the Fourteenth Amendment.

Robertson, 420 F.3d at 1262.

The Eleventh Circuit addressed *McCurdy v. Dodd*, 352 F.3d 820 (3d Cir. 2003), explaining that the Third Circuit had concluded that "the fundamental guarantees of the Due Process Clause do not extend to a parent's interest in the companionship of his independent adult child," but "also [had] discussed the incidental nature of the injury: 'It would, therefore, stretch the concept of due process too far if we were to recognize a constitutional violation based on official actions that were not directed at the parent-child relationship.'" *Id.* at 1259 (quoting *McCurdy*, 352 F.3d at 830).

In *McCurdy*, the Third Circuit discussed when a child becomes an adult:

> In most cases, the point at which a child legally becomes an adult may be established by the presumed state age of majority. … Nevertheless, adulthood is often a fact-specific inquiry heavily dependent on the unique context of each situation. For this reason, all of the states in our Circuit recognize the more fluid concept of "emancipation," as well as

> adulthood. … Because it may be impossible to make sound generalizations about typical family relationships, … there may be rare instances where the more flexible concept of emancipation more appropriately fits the parent-child relationship at issue. …
>
> In the vast majority of cases, adulthood may be established by reference to the presumed state age of majority; in some (probably rare) cases, the presumption of adulthood may be rebutted by clear and convincing evidence of lack of emancipation.

352 F.3d at 830; *accord Chambers*, 587 F.3d at 191 ("The scenario we described in dicta in *McCurdy* is precisely the one that is presented in this case. The record leaves no room for doubt that Ferren functions on the level of a young child and is completely dependent on her parents in nearly every aspect of her daily life.").

The Eleventh Circuit did not discuss the age-of-adulthood aspect of *McCurdy* but noted, "As the plaintiff has not contended the decedent (who was 30 years old at the time of death) was a minor, we do not need to decide when a child crosses the threshold from minor to adult."[9] 420 F.3d at 1260 n.6.

Dismissal of the plaintiff's § 1983 claim for monetary relief for her own injuries against Judge Merrett and Assistant State Attorneys Wells and Trudeau in their official capacities is warranted under § 1915(e)(2)(B)(ii) because she fails to state a claim on which relief can be granted. These state

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[9]Although § 1983 "provides a federal cause of action, … in several respects … federal law looks to the law of the State in which the cause of action arose." *Wallace v. Kato*, 549 U.S. 384, 387 (2007). Under Florida law, "[i]n construing [Florida] statutes … [,] [t]he word 'minor' includes any person who has not attained the age of 18 years." Fla. Stat. § 1.01(13). Florida law further provides, "The disability of nonage is … removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law." *Id.* § 743.07(1).

officials in their official capacities are not "persons" subject to § 1983 liability for damages. *See Will*, 491 U.S. at 71.

Dismissal of the plaintiff's § 1983 claim for her own injuries against the defendants in their individual capacities is warranted under § 1915(e)(2)(B)(ii) because she fails to state a claim on which relief can be granted. Even if this Court ruled that the Fourteenth Amendment Due Process Clause extends to provide a right to parental liberty in the care, custody, and control of a child older than 18 years under the facts alleged (the plaintiff's son had suffered childhood trauma, Doc. 1-4 at 81–85, had been diagnosed in school as emotionally handicapped, *id*. at 47, had been placed in "exceptional student education," *id*. at 45, 46, and had been living with her when he committed the crimes, Doc. 1 ¶ 10), the plaintiff fails to allege facts making plausible that any defendant *deliberately* sought to harm *her* relationship with her son. *See* Doc. 1. Only deliberate conduct violates due process. *See Daniels*, 474 U.S. at 328.

Dismissal of the plaintiff's § 1983 claim against Davis for her own injuries is also warranted under § 1915(e)(2)(B)(ii) because she fails to state a claim on which relief can be granted. Davis is a private lawyer, and § 1983 does not extend to private conduct. *See Am. Mfrs. Mut.*, 526 U.S. at 50. The plaintiff's allegations against Davis concern his actions as privately retained defense counsel for her son. Although the plaintiff alleges that the defendants "operated under a non-statutory scheme to deny [her] minor son[] a due process of law consideration of the Youthful Offender Act," she alleges no facts making plausible that a state actor coerced or significantly encouraged Davis's actions, that Davis performed a public function traditionally the prerogative of the

state, or that the state insinuated itself into a position of interdependence with Davis. *See Charles*, 18 F.4th at 694.[10]

2. Immunity from Monetary Relief

Under the dismissal provision of the in forma pauperis statute, "the court shall dismiss the case at any time if the court determines that … the action … seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(iii).

a. Eleventh Amendment Immunity

The Eleventh Amendment provides, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." U.S. CONST. amend. XI.

[10]A constitutional claim under § 1983 is a tort claim subject to the statute of limitations governing a personal-injury claim in the state where the § 1983 claim is brought. *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 872 (11th Cir. 2017). Generally, the "discovery rule" applies, under which the period begins to run when "the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *Foudy v. Indian River Cnty. Sheriff's Off.*, 845 F.3d 1117, 1123 (11th Cir. 2017).

Effective March 24, 2023, Florida's statute of limitations law, Fla. Stat. § 95.11, was amended to reduce the statute of limitations for negligence claims from four years to two years. Fla. Stat. § 95.11(4)(a) (2023). "The amendments … apply to causes of action accruing after the effective date of this act." FL LEGIS 2023-15, 2023 Fla. Sess. Law Serv. Ch. 2023-15 (C.S.C.S.H.B. 837).

The statute of limitations—whether two or four years—bars the plaintiff's § 1983 claim if it accrued in 2007 when the plea was entered and the sentence was imposed. Because independent bases for dismissal exist, and in the interest of judicial economy, the Court need not decide whether the bar applies.

"Absent a legitimate abrogation of immunity by Congress or a waiver of immunity by the state being sued, the Eleventh Amendment is an absolute bar to suit by an individual against a state or its agencies in federal court." *Gamble v. Fla. Dep't of Health & Rehab. Servs.*, 779 F.2d 1509, 1511 (11th Cir. 1986). The "immunity extends beyond the words of the Eleventh Amendment itself, and includes suits … in which a state is being sued by its own citizen." *Id.*

A plaintiff, however, may sue "to enjoin unconstitutional state action by naming the responsible state officer in the complaint, and requesting that the officer be enjoined from further unconstitutional conduct." *Id.* (citing *Ex parte Young*, 209 U.S. 123 (1908)). This exception "applies only to prospective, as opposed to retroactive, relief." *Id.* at 1512. "Generally speaking, then," the Eleventh Amendment "will bar damage awards against state officers sued in their official capacities in suits brought in federal court" under § 1983. *Id.*

"Despite this bar to damage suits against the states in federal court, there are two ways in which this immunity can be overcome." *Id.* "First, Congress may abrogate the state's immunity by explicit Congressional enactment through its legislative powers granted to it by the states in § 5 of the Fourteenth Amendment … or perhaps through its other congressionally-mandated legislative powers." *Id.* "Second, the state itself may waive its Eleventh Amendment immunity and, thereby, consent to suit in federal court." *Id.*

Congress has not abrogated a state's immunity from damages under § 1983. *Id.* at 1512–13. And although Florida has waived sovereign immunity for the state, its agencies, and its subdivisions in tort actions, *see* Fla. Stat. § 768.28(5)(a); *Wallace v. Dean*, 3 So. 3d 1035, 1046 (Fla. 2009), Florida has not

consented to be sued for damages under § 1983, *Gamble*, 779 F.2d at 1515; *accord Hill v. Dep't of Corr., State of Fla.*, 513 So. 2d 129, 133 (Fla. 1987).

"While the Eleventh Amendment is jurisdictional in the sense that it is a limitation on the federal court's judicial power," the defense "is not coextensive with the limitations on judicial power in Article III." *Calderon v. Ashmus*, 523 U.S. 740, 745 n.2 (1998); *see also McClendon v. Ga. Dep't of Cmty. Health*, 261 F.3d 1252, 1257 (11th Cir. 2001) ("[T]he jurisdictional bar embodied in the Eleventh Amendment is a rather peculiar kind of jurisdictional issue." (internal quotation marks and quoted authority omitted)). "The Eleventh Amendment … does not automatically destroy original jurisdiction. Rather, the Eleventh Amendment grants the State a legal power to assert a sovereign immunity defense should it choose to do so." *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998). Unlike subject-matter jurisdiction, a federal court can but need not raise Eleventh Amendment immunity on its own. *Id.* Still, because of the "jurisdictional nature" of Eleventh Amendment immunity, dismissal based on Eleventh Amendment immunity is without prejudice. *Dupree*, 92 F.4th at 1008; *see, e.g.*, *Nichols v. Ala. State Bar*, 815 F.3d 726, 733 (11th Cir. 2016) ("Given that the State Bar is an arm of the state entitled to Eleventh Amendment immunity, the district court properly dismissed Nichols's § 1983 action without prejudice for lack of subject matter jurisdiction.").

Dismissal of the plaintiff's § 1983 claim for monetary relief for her own injuries against Judge Merrett and Assistant State Attorneys Wells and Trudeau in their official capacities is warranted under § 1915(e)(2)(B)(iii) because they, in their official capacities, are immune from that relief.

b. Judicial Immunity

"Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction." *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quotation marks omitted). Factors for determining whether actions were made in a judicial capacity include whether: "(1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity." *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005).

"[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Id.* at 356–57 (internal quotation marks and quoted authority omitted).

The Supreme Court has provided an example of a judge acting in the clear absence of all jurisdiction:

> [I]f a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Stump, 435 U.S. at 357 n.7.

In Florida, circuit courts "have exclusive original jurisdiction … [o]f all felonies[.]" Fla. Stat. § 26.012(2)(d); *accord Hyland v. Kolhage*, 267 F. App'x 836, 840 (11th Cir. 2008) ("[U]nder Fla. Stat. § 26.012(2)(d), circuit courts have 'exclusive original jurisdiction' over all felony offenses. As the presiding judge, Judge Miller had jurisdiction over Hyland's sentence hearing and all matters related to it.").

Dismissal of the plaintiff's § 1983 claim for monetary relief for her own injuries against Judge Merrett in his individual capacity is warranted under § 1915(e)(2)(B)(iii) because he has absolute judicial immunity from damages. His acts—taking and accepting the guilty pleas and sentencing the plaintiff's son—were taken while Judge Merrett was acting in his judicial capacity and within his jurisdiction over felony cases as a state circuit judge.[11]

c. Prosecutorial Immunity

"It is well settled that the various officers of the State Attorney's Office are quasi-judicial officers, as established by article V, section 17 of the Florida Constitution." *Qadri v. Rivera-Mercado*, 303 So. 3d 250, 254 (Fla. 5th DCA 2020).

A state prosecutor in her individual capacity is absolutely immune from

[11]Under similar reasoning and the plain language of § 1983, even if the plaintiff had standing for injunctive relief, injunctive relief against Judge Merrett is unavailable under § 1983. *See* 42 U.S.C. § 1983 ("[E]xcept that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.").

liability under 42 U.S.C. § 1983 for damages for an act that is an integral part of the judicial process. *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976); *accord Bolin*, 225 F.3d at 1242. The immunity "extends to a prosecutor's actions in initiating and pursuing a criminal prosecution and in presenting the state's case," even if the prosecutor, for example, filed an information without investigation, filed charges without jurisdiction, filed a baseless detainer, offered perjured testimony, suppressed exculpatory evidence, refused to investigate complaints about conditions of confinement, threatened more prosecutions, and tried to persuade the defendant to not sue officials in exchange for parole. *Henzel v. Gerstein*, 608 F.2d 654, 657 (5th Cir. 1979) (quoted authority and alterations omitted).

A Florida prosecutor in her individual capacity likewise is absolutely immune from liability under state law for damages "resulting from the performance of [her] quasi-judicial functions of initiating or maintaining a prosecution." *Qadri*, 301 So. 3d at 254 (internal quotation marks and quoted authority omitted). "This is true regardless of whether the prosecutor acted maliciously or corruptly." *Id.* (internal quotation marks and quoted authority omitted).

The "approach" to determining absolute immunity "focuses on the conduct for which immunity is claimed, not on the harm that the conduct may have caused or the question whether it was lawful." *Buckley v. Fitzsimmons*, 509 U.S. 259, 271 (1993). That approach is used for both § 1983 claims, *see id.* at 261, 271, and for Florida claims, *see Qadri*, 301 So. 3d at 254.

Dismissal of the plaintiff's § 1983 claim for monetary relief against Assistant State Attorneys Wells and Trudeau in their individual capacities for

her own injuries is warranted under § 1915(e)(2)(B)(iii) because they have absolute prosecutorial immunity from damages. Their acts—pursuing the State of Florida's case against the plaintiff's son through plea negotiations, sentencing, and post-conviction proceedings—were integral to the judicial process.

D. The Heck Doctrine

Under the *Heck* doctrine,

> to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus[.] A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Heck v. Humphrey, 512 U.S. 477, 486–87 (1994) (internal footnote, citation, and emphasis omitted). The *Heck* doctrine extends to claims for equitable relief. *Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005).

Most circuits hold or state in dictum that the *Heck* doctrine is not jurisdictional. *See Kitchen v. Whitmer*, 106 F.4th 525, 534 n.4 (6th Cir. 2024) ("Our court, following the Supreme Court's lead, has phrased *Heck* challenges in terms of whether a § 1983 claim is 'cognizable,' which likely implies that a *Heck* challenge more properly sounds in failure to state a claim as opposed to lack of subject-matter jurisdiction."); *Vuyanich v. Smithton Borough*, 5 F.4th 379, 389 (3d Cir. 2021) ("We agree that *Heck* does not implicate a federal court's jurisdiction[.]"); *Colvin v. LeBlanc*, 2 F.4th 494, 498–99 (5th Cir. 2021) ("We …

hold that *Heck* does not present a jurisdictional hurdle that would require a remand … to state court."); *Okoro v. Bohman*, 164 F.3d 1059, 1061 (7th Cir. 1999) ("[T]he *Heck* defense is not jurisdictional."); *see also Washington v. L.A. Cty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016) ("[C]ompliance with *Heck* most closely resembles the mandatory administrative exhaustion of [Prison Litigation Reform Act] claims, which constitutes an affirmative defense and not a pleading requirement."); *but see O'Brien v. Town of Bellingham*, 943 F.3d 514, 528–29 (1st Cir. 2019) (characterizing the *Heck* doctrine as jurisdictional and not waivable).

The Fifth Circuit explained,

> We have routinely characterized a *Heck* dismissal as one for failure to state a claim, but district courts in this circuit have occasionally characterized *Heck* as a jurisdictional doctrine. We have also, at least once, affirmed a *Heck* dismissal granted for lack of subject matter jurisdiction. We therefore take this opportunity to reiterate that *Heck* does not pose a jurisdictional bar to the assertion of § 1983 claims.
>
> *Heck* discussed the scope of § 1983 claims, not subject matter jurisdiction. It based its holding on the "hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments," and analyzed when and how a § 1983 cause of action accrues. By its own language, therefore, *Heck* implicates a plaintiff's ability to state a claim, not whether the court has jurisdiction over that claim. We therefore hold that *Heck* does not present a jurisdictional hurdle that would require a remand of this case to state court.

Colvin, 2 F.4th at 498–99 (footnotes omitted).

The Eleventh Circuit has observed that it has "not definitively answered" whether *Heck* is jurisdictional, acknowledging its own dictum that *Heck* is jurisdictional while also observing that "the Supreme Court's own language

suggests that *Heck* deprives the plaintiff of a cause of action—not that it deprives a court of jurisdiction." *Teagan v. City of McDonough*, 949 F.3d 670, 678 (11th Cir. 2020); *accord Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185, 1191 & 1191 n.4 (11th Cir. 2020) ("The magistrate judge may have erred in [concluding the court lacked jurisdiction based on the *Heck* doctrine]. Though we have said in dicta that *Heck* strips a federal court of jurisdiction, … we have more recently called that proposition into serious doubt. … Since we hold that *Heck* does not bar Harrigan's claim, we have no occasion to consider whether *Heck* is a jurisdictional ruling or whether it just deprives a plaintiff of a cause of action." (emphasis added)).

The Supreme Court has "tried in recent cases to bring some discipline to the use" of the term "jurisdictional," *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011), considering the "untoward consequences" of mischaracterizing a rule as jurisdictional, *Sebelius v. Auburn Reg. Med. Ctr.*, 568 U.S. 145, 153 (2013), and a "marked desire" to curtail "drive-by jurisdictional rulings" that "too easily can miss the critical differences between true jurisdictional conditions and nonjurisdictional limitations," *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161 (2010) (internal quotation marks and alteration omitted). "[T]he absence of a valid … cause of action does not implicate subject-matter jurisdiction, *i.e.*, the courts" statutory or constitutional *power* to adjudicate the case." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (emphasis in *Steel Co.*).

To give a plaintiff an opportunity to sue again if a conviction is invalidated or expunged, a dismissal based on the *Heck* doctrine is without prejudice. *See Petersen v. Overstreet*, 819 F. App'x 778, 779 (11th Cir. 2020)

("[C]ases barred by *Heck* … are typically dismissed without prejudice."). To protect an absolutely immune defendant from a future suit on the same facts, a court should decide an absolute-immunity issue before dismissal based on the *Heck* doctrine. *Abella v. Rubino*, 63 F.3d 1063, 1065 n.3 (11th Cir. 1995).

Employing the Fifth Circuit's reasoning, the *Heck* doctrine does not implicate a court's subject-matter jurisdiction. Rather than affecting a court's power to adjudicate the case, the *Heck* doctrine affects the validity of a § 1983 claim. Because independent bases for dismissal exist and the *Heck* doctrine does not implicate the Court's jurisdiction, and in the interest of judicial economy, the Court need not decide whether the *Heck* doctrine also bars the plaintiff's § 1983 claim.

E. Supplemental Jurisdiction

The Florida Wrongful Death Act creates a "[r]ight of action":

> When the death of a person is caused by the wrongful act [or] negligence … of any person … and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person … that would have been liable in damages if death had not ensued shall be liable for damages … notwithstanding the death of the person injured[.]

Fla. Stat. § 768.19. "It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer." *Id.* § 768.17. The Wrongful Death Act is "remedial and shall be liberally construed." *Id.*

In a wrongful death action, the injury "is to the decedent's statutory beneficiaries, not the decedent." *Coates v. R.J. Reynolds Tobacco Co.*, 375 So.

3d 168, 173 (Fla. 2023). Thus, "although there must be a tort underlying the wrongful death action, it is more appropriate to say that a personal representative brings a wrongful death claim … based on alleged negligence … than to say that the personal representative prosecutes the decedent's cause of action." *Sheffield v. R.J. Reynolds Tobacco Co.*, 329 So. 3d 114, 121 (Fla. 2021) (internal quotation marks and quoted authority omitted).

The law specifies who must bring the action and that no action for personal injury of the decedent survives:

> The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages … caused by the injury resulting in death. When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate.

Fla. Stat. § 768.20; *see Martin v. United Sec. Servs., Inc.,* 314 So. 2d 765, 770–71 (Fla. 1975) (explaining that the law both creates a cause of action and limits the availability of other causes of action). The selection, appointment, and duties of a personal representative are in Florida's Probate Code. *See* Fla. Stat. ch. 733 (Florida's Probate Code); *id.* §§ 733.301–733.309 (preferences and qualifications for personal representatives); *id.* §§ 733.601–733.620 (duties and powers of personal representatives). The law defines "survivors" to include the decedent's parents, *id.* § 768.18(1), and specifies the damages the survivors and the estate may recover, *id.* § 768.21, including funeral expenses, *id.* § 768.21(5).

The Florida legislature has not defined "death" for purposes of the Wrongful Death Act, *see id.* §§ 768.16–768.26, or generally for purposes of

statutory construction, *see id.* § 1.01. Florida common law, incorporated into the Florida Statutes, *id.* § 2.01, likewise does not define "death." *In re T.A.C.P.*, 609 So. 2d 588, 591 n.7 (Fla. 1992). Primary dictionary definitions of "death" are "a permanent cessation of all vital … functions: the end of life"; "[t]he act or fact of dying; the end of life; the permanent cessation of the vital functions of a person, animal, plant, or other organism"; and "the act of dying; the end of life; the total and permanent cessation of all the vital functions of an organism." *See* MERIAM WEBSTER, "death," https://www.merriam-webster.com/dictionary/death (last visited Oct. 25, 2024); OXFORD ENGLISH DICTIONARY, "death," https://www.oed.com/dictionary/death_n?tab=meaning_and_use#7277540 (last visited Oct. 25, 2024); DICTIONARY.COM, "death," https://www.dictionary.com/browse/death (last visited Oct. 25, 2024).

Courts interpreting Florida statutes follow the "supremacy-of-text-principle." *State v. Crose*, 378 So. 3d 1217, 1233 (Fla. 2d DCA 2024). Under that principle, "'words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). Courts interpreting Florida statutes "also adhere to [the] view that every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Id.* (internal quotation marks and quoted authority omitted; alteration in *Crose*). Courts interpreting Florida statutes in this manner may consider the dictionary definition to "ascertain the plain and ordinary meaning of the term." *Id.* at 1238 (quoted authority omitted).

Under 28 U.S.C. § 1331, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Under 28 U.S.C. § 1367(a), with some exceptions, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Section 1367(c) adds,

> The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—(1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

The supplemental-jurisdiction statute is a codification of principles earlier established by the Supreme Court. *City of Chi. v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172–73 (1997). "A district court's decision whether to exercise that jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). "Depending on a host of factors ...—including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims—district courts may decline to exercise jurisdiction over supplemental state law claims." *City of Chi.*, 522 U.S. at 173. "The statute thereby reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, a federal court should consider and weigh in each

case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." *Id.* (internal quotation marks and quoted authority omitted).

"When district courts dismiss all claims independently qualifying for the exercise of federal jurisdiction, they ordinarily dismiss as well all related state claims." *Artis v. District of Columbia*, 583 U.S. 71, 74 (2018); *see also Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (explaining—before codification of the pendant-jurisdiction doctrine—that no mandatory, inflexible rule applies but observing that "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims").

Although the plaintiff clearly brings a claim under § 1983 for an alleged violation of her Fourteenth Amendment Due Process Clause right to parental liberty in the care, custody, and control of her son, Doc. 1 at 1 & ¶¶ 1, 43, less clear, considering the title and description of her pleading referencing only § 1983, *id.* at 1 & ¶ 1, is whether she brings a claim under the Florida Wrongful Death Act based on alleged wrongful acts and a breach of her son's plea agreement, *see id.* ¶¶ 41, 47–52.

The Court has federal-question jurisdiction under § 1331 because the plaintiff brings a § 1983 claim and supplemental jurisdiction under § 1367(a) over any Florida Wrongful Death Act claim based on the same facts. *See id.* The Court does not appear to have diversity jurisdiction under § 1332 because the parties do not appear diverse. *See id.* ¶¶ 3–7 (pleading allegations that the

plaintiff is a Florida citizen suing a Florida judge, Florida prosecutors, and a Florida lawyer).

With dismissal of the § 1983 claim, exercising discretion to decline to exercise supplemental jurisdiction over any state law claim under the Wrongful Death Act or otherwise is warranted considering judicial economy, convenience, fairness, and comity. The case has not progressed past the filing of the complaint, the order allowing the plaintiff to proceed without prepaying costs, Doc. 11, and this review under the in forma pauperis statute. The plaintiff asks for a novel interpretation of "death" under the Florida Wrongful Death Act. The limitations period either expired long ago or remains open under the plaintiff's asserted accrual date of February 2, 2024.

F. The Liberal Amendment Standard

If a more carefully drafted complaint might state a claim, a litigant without a lawyer must be given at least one chance to amend the complaint before the court may dismiss it with prejudice. *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001). But dismissal with prejudice is appropriate if granting leave to amend would be futile. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007). Granting leave to amend would be futile if the complaint as amended would still be properly dismissed. *Id.*

The plaintiff has thoroughly presented the facts through her lengthy and comprehensive pleading, including exhibits. Even liberally construing her pleading, a more carefully drafted complaint will not state a claim for relief for the plaintiff under § 1983 or any other federal law. Because granting leave to amend would be futile, dismissal, not leave to amend, is warranted.

IV. Recommendation

Thus, the undersigned recommends:

(1) **dismissing** the plaintiff's § 1983 claim without prejudice for lack of Article III standing to the extent the plaintiff attempts to bring the claim for her son's injuries (as opposed to her own injuries) or attempts to obtain a declaration of unconstitutionality or an injunction enjoining the defendants from trying to condemn anyone under 25 years old to "civil death";

(2) **dismissing** the plaintiff's § 1983 claim with prejudice to the extent she brings the claim for her own injuries for failing to state a claim on which relief can be granted and seeking monetary relief against defendants immune from such relief;

(3) **declining** to exercise supplemental jurisdiction over any state law claim; and

(4) **directing** the clerk to terminate any pending motions and close the file.

V. Objections

"Within 14 days after being served with a copy of [a] recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). "A party may respond to another party's objections within 14 days after being served with a copy." *Id.* "The district judge 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); *see also* 28 U.S.C. § 636(b)(1)(C) ("A [district judge] shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). "A party failing to

object to … findings or recommendations … in a report and recommendation … waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions[.]" 11th Cir. R. 3-1.

Entered in Jacksonville, Florida, on October 28, 2024.

PATRICIA D. BARKSDALE
United States Magistrate Judge

c: The Hon. Marcia Morales Howard

Angela M. Walton
1743 West 43rd Street
Jacksonville, FL 32209