

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:26-cv-01123-GPG-CYC

ISAAC N. through his next friend Kerry Simpson,
TONY S. through his next friend Leigh Truhe, and
VEGETA K. through his next friend Quentin
Montemayor, for themselves and those similarly
situated,

Plaintiffs,

v.

JARED POLIS, in his official capacity as the
Governor of Colorado, and MICHELLE
BARNES, in her official capacity as Executive
Director of the Colorado Department of Human
Services,

Defendants.

**DEFENDANTS' JOINT REPLY TO PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS [DKT. 67]**

Plaintiffs' Opposition (Dkt. 67) confirms that dismissal is appropriate under Rule 12(b)(1) based on (1) a lack of standing; (2) sovereign immunity; and (3) *Younger* abstention. And Plaintiffs' efforts to stretch the allegations in the Amended Complaint underscore their failure to state a claim under Rule 12(b)(6).

I. Plaintiffs are not immediately releasable under their juvenile court orders.

Plaintiffs' Opposition continues to rest on the incorrect premise that Plaintiffs are immediately "releasable" from custody. See Dkt. 67 at 1 n.1; see *generally id.* (using "releasable" 19 times). Plaintiffs have been charged with committing felonies, a juvenile court has found probable cause to believe they have committed the offense, and a juvenile judge has determined that they would pose a substantial risk of serious harm to the community or a risk of flight if they were released without appropriate mitigating conditions in place. See Dkt. 63 at 4-5; Dkt. 53 ¶¶ 81, 84. Thus, despite Plaintiffs' inflammatory rhetoric and conclusory allegations, Plaintiffs do not—and cannot—contest that they have no "right to immediate release from pre-trial detention." Dkt. 63 at 1, 4-6.

Plaintiffs' juvenile court orders are central to their claims, see, e.g., Dkt. 53 ¶¶ 19, 34, 48, 79, yet the Amended Complaint omits all details concerning the terms of those orders. On their face, Plaintiffs' court records (Exs. A, B, C) [REDACTED] [REDACTED]. This Court can and should consider those orders in deciding Defendants' Motion to Dismiss because they are "central" to Plaintiffs' claims, and because consideration of the orders will prevent a material misunderstanding of Plaintiffs' allegations. See *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384-85 (10th Cir. 1997); *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th

Cir. 2007).¹

The orders confirm that [REDACTED]

[REDACTED] see Ex. A at 6-7 [REDACTED]

[REDACTED] Ex. C [REDACTED]

[REDACTED] see Exs. A

at 7-8 & B. Indeed, for at least one Plaintiff, [REDACTED]

[REDACTED] Ex. C.

As the CDHS legislative hearing report referenced in the Motion² explained:

[T]he CYDC Advisory Board voted in October [2024] to **stop using the term 'releasable' to describe these youth because it is very misleading** and instead refer to them as 'youth awaiting mitigating services.' Many times youth who are 'releasable' are only given that status because the court wants to ensure if a placement is found, the team of professionals can move forward with the placement upon agreement and NOT have to set a court date and return at a later time. **This does not necessarily mean the youth can actually be released at any point in time** because their charges or behaviors as described above are far too significant for any provider in Colorado, or sometimes the county, to take them into their placements without more significant interventions.

¹ Plaintiffs' counsel produced Exhibits A-C to Defendants at 5:09 p.m. on June 29, 2026 (the day Defendants' Motion to Dismiss was due) in response to Defendants' request on June 8, 2026, and multiple follow up requests, for a copy of any bond orders supporting the claim that Plaintiffs are "releasable." Because Plaintiffs produced the documents, their authenticity is not subject to reasonable dispute. See *GFF Corp.*, 130 F.3d at 1384-85. And because Exs. A-C are court records, this Court may also take judicial notice of those records pursuant to Fed. R. Evid. 201. See, e.g., *Stack v. McCotter*, 79 F. App'x 383, 391 (10th Cir. 2003) (holding "state district court docket sheet" was subject to judicial notice).

² Plaintiffs do not acknowledge the report; nor do they dispute that this Court may properly take judicial notice of that formal government record. See Dkt. 63 at 1 n.1, 5 & n.2.

Ex. D (CDHS FY 2025-26 Committee Hr'g at 24-26) (emphases added).

II. Plaintiffs lack Article III standing.

Plaintiffs fail to establish injury in fact. To the extent Plaintiffs base their injury-in-fact on an entitlement to immediate release upon entry of a juvenile court order, see Dkt. 67 at 9, that premise is demonstrably incorrect. See *Supra* at 1-2; Ex. C [REDACTED] [REDACTED] see also Dkt. 53 ¶ 12.

To the extent Plaintiffs present a theory of injury based on the terms of their “release” orders, they fail to support it with factual allegations. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For instance, while Plaintiffs assert that they “remained unlawfully detained despite court determinations that they may be released under specified conditions within the control of Defendants,” Dkt. 67 at 9 (citing Dkt. 53 ¶¶ 88-92), their cited paragraphs contain no facts concerning the named Plaintiffs or their “specified conditions.” The Amended Complaint is silent as to the individualized factors that juvenile courts consider when deciding whether to allow for release, including: the nature of Plaintiffs’ crimes, the risks Plaintiffs pose to the community, the specific services that might mitigate those risks, the availability of those specific services in the community, and the potential need for substance-abuse treatment. See Dkt. 53 ¶¶ 19-25, 34-39, 48-56.

Plaintiffs’ citation to *Gaylor v. Does*, 105 F.3d 572 (10th Cir. 1997), demonstrates their failure to plausibly allege a legally cognizable injury. In *Gaylor*, the plaintiff established that (1) the court in his underlying criminal proceeding had set a \$1,000 bond for his release, but (2) that jail officials lied to him by telling him that his bond had not been set, thereby depriving him of the opportunity to pay the bond and be released. *Id.* at 573-

74. Thus, the plaintiff had demonstrated specific *facts* showing that there was just one condition (payment of bail) that needed to be satisfied for his release. *Id.* There, plaintiff's injury was easily ascertainable: the five days of unlawful detention that occurred between when (1) the court set bail and (2) the jail officials informed plaintiff of the court's order. *Id.* at 576-77. In that case, the jail officials' policy of obstructing plaintiff's *own* performance of the condition precedent for his release provided a basis for the case to proceed. Here, Plaintiffs have not alleged a single fact showing the conditions that must be satisfied before they can be released, much less explain how Defendants are preventing the satisfaction of those conditions.

Plaintiffs' citation to *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), also undermines their claims. *McLaughlin* concerned a Fourth Amendment dispute over what constitutes a "prompt" judicial probable cause hearing, which is required as a prerequisite to an extended pretrial detention following an arrest. *Id.* at 47. Yet here, Plaintiffs have undisputedly received a "prompt" judicial determination that probable cause exists for their detention. See C.R.S. § 19-2.5-305(3)(a)(IV)(A). Unlike in *McLaughlin*, the lawfulness of Plaintiffs' initial detention simply is not at issue.³

Plaintiffs fail to establish traceability. Plaintiffs cannot trace their allegedly "unlawful detention" to any conduct by Defendants. They are in detention because they were charged with felony offenses and a juvenile court judge found their release would pose a

³ Plaintiffs offer two alternative theories of injury based on their putative sub-classes. See Dkt. 67 at 10. Those allegations are pure legal conclusions, devoid of any well-pleaded factual support. See, e.g., *WildEarth Guardians v. Extraction Oil & Gas, Inc.*, 457 F. Supp. 3d 936, 945 (D. Colo. 2020). They cannot establish standing.

substantial risk to the community. See Dkt. 63 at 4-5. Defendants play no role in bringing or adjudicating the delinquency charges.

To the extent Plaintiffs assert an injury of “untimely” release, see Dkt. 67 at 10, they fare no better. Plaintiffs’ allegations of misconduct rest on omissions: unidentified actions that Defendants allegedly “failed” to take. See, e.g., *id.* at 11. They provide no facts explaining how Defendants’ alleged *inaction* injured Plaintiffs. For instance, as to the only Plaintiff who was in detention at the time of the Amended Complaint, Plaintiffs assert that “Vegeta K. remained detained because Defendants failed to provide needed services.” *Id.* Yet the Amended Complaint provides no indication of what those services are, much less how Defendants were responsible for providing them.⁴

Plaintiffs’ reliance on two non-delinquency foster-care cases underscores their failure to establish traceability in this juvenile *detention* context. See *Jonathan R. v. Morrissey*, 178 F.4th 139, 162 (4th Cir. 2026); *B.K. v. Snyder*, 922 F.3d 957, 967 (9th Cir. 2019). In those cases, delinquency charges were not at issue, and plaintiffs were not being held in pre-trial detention. Rather, the alleged injuries were physical and psychological harms caused by tragic stories of foster care abuse, such as one named plaintiff’s allegation that she was placed “in a facility with a history of child molestation, sexual battery, and sexual assault by patients and employees alike.” *Jonathan R.*, 178

⁴ Plaintiffs accuse Defendants of “mischaracteriz[ing] their legal responsibility and the statutory framework” by arguing that “the release conditions require collaboration with third parties.” Dkt. 67 at 11. But Plaintiffs’ court documents demonstrate [REDACTED]

See Exs. A-C.

F.4th at 162; see *B.K.*, 922 F.3d at 967 (finding standing where the plaintiff had “serious medical diagnoses that require prompt and adequate medical care”). Neither the alleged injuries nor the alleged misconduct in this case are remotely comparable.

Plaintiffs fail to establish redressability. Plaintiffs embrace the fact that they seek sweeping “structural statewide systemic relief,” yet they cannot name a single specific action they want Defendants to take. See, e.g., Dkt. 53 ¶ 239. They therefore cannot answer the basic redressability questions of (1) what order they want from this Court; and (2) how that order will remedy the named Plaintiffs’ alleged injuries.

Plaintiffs’ cryptic reference to other courts that have awarded relief “consistent” with their request, Dkt. 67 at 12, does not withstand scrutiny. Two of Plaintiffs’ cited cases had nothing to do with delinquency charges; they involved egregious foster care mismanagement leading to concrete allegations of physical and mental abuse against named plaintiffs.⁵ And the third case, *Disability Rights Maryland, Inc. v. Seshamani*, 817 F. Supp. 3d 303, 310 (D. Md. 2025), shows exactly why the request for relief in this case is *insufficient* to establish standing. The plaintiffs there were seeking to enforce a state law that set a 10-day period for adult criminal defendants unfit to stand trial to be transferred from custody. *Id.* Here, in contrast, Plaintiffs insist they are not bringing state law claims, and they do not identify any time period in which they believe they were required to be released from detention.

Plaintiffs’ discussion of mootness demonstrates that they lack standing. Plaintiffs

⁵ See *Jonathan R.*, 178 F.4th at 159; *Keira M. ex. rel. Odeneal v. Quin*, No. 3:25-cv-00566, 2026 WL 937311, at *14–15 (M.D. Tenn. Apr. 7, 2026).

concede that Isaac N. and Tony S. were released from custody by the time they filed the Amended Complaint. Dkt. 67 at 13 n.5. This Court is required to consider the allegations in the Amended Complaint to assess standing. *See S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1152 (10th Cir. 2013). And the Amended Complaint demonstrates that Isaac N. and Tony S. were not in detention when it was filed. *See* Dkt. 63 at 7. That undisputed fact underscores Plaintiffs' failure to establish standing.⁶

Even if Plaintiffs were right that "the relevant question is whether the proposed remedies would have helped them at the time of filing [the original complaint]," Dkt. 67 at 13 n.5, Plaintiffs' claims fail for all the reasons stated above. They do not—and cannot—explain *how* their requested remedies would have (or could have) helped the named Plaintiffs, particularly when those Plaintiffs already have been released.

III. Sovereign immunity bars Plaintiffs' claims.

Sovereign Immunity bars Plaintiffs' section 1983 claims. To apply the narrow *Ex parte Young* exception to sovereign immunity, the defendants must be "involved in the *enforcement* of the statutes [or other state law] in question." 209 U.S. 123, 177 (1908) (emphasis added). Accordingly, for *Ex parte Young* to even arguably apply, Plaintiffs must identify a "state law" that, if *enforced*, would violate the federal constitution. *See Whole Woman's Health v. Jackson*, 595 U.S. 30, 46-47 (2021). Plaintiffs' concession that they

⁶ As a matter of judicial economy, Defendants did not address mootness in detail because Plaintiffs alleged Vegeta K. was still in detention. But Plaintiffs' express concession that all three of the named Plaintiffs have been released from detention, Dkt. 67 at 13 n.5, is sufficient to establish that their claims are moot even if the Court finds standing, *see Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). Any discussion of class-action-specific exceptions to mootness is premature.

are *not* seeking to enjoin the enforcement of any state law or policy, see Dkt. 67 at 15, therefore dooms their section 1983 claims.

Both cases Plaintiffs cite for the contrary conclusion confirm that *Ex parte Young* extends only to cases seeking to enjoin enforcement of state legal action. See *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 638 (2002) (seeking to enjoin order from state utility commission that required certain payments); *Eaves v. Polis*, 167 F.4th 1304, 1315 (10th Cir. 2026) (seeking to enjoin enforcement of prison “regulations and policies that prevent[ed] Plaintiff from exercising his faith”). Plaintiffs cite no case applying *Ex parte Young* as a tool to bypass the state legislature and impose sweeping (and costly) policy reforms on state officials. Plaintiffs seek to overhaul Colorado’s juvenile justice system by judicial fiat instead of legislation. They ask this Court to take over Defendants’ duties to set “agency priorities and funding, respond[] to issues regarding relevant policy, and appoint[] agency leadership.” Dkt. 67 at 15. But such a sweeping federal intrusion into state affairs (including the state fisc) would pose extreme federalism concerns, and it is inconsistent with the “narrow” *Ex parte Young* exception to sovereign immunity.

Finally, Plaintiffs seek to avoid *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984), by insisting that they “do not assert any state law claims.” Dkt. 67 at 15. But Plaintiffs’ theory of standing relies on the assertion that “Defendants’ failure to fulfill [state-law statutory] duties is the cause of Plaintiffs’ continued detention.” *Id.* at 11. And they admit that they seek an order requiring executive officials to “effectuate” their state juvenile courts’ conditional release orders. *Id.* at 18. Thus, while Plaintiffs nominally disclaim reliance on state law, their entire legal theory collapses without it.

Sovereign immunity applies to Plaintiffs' ADA claim. Plaintiffs do not separately argue against sovereign immunity as to the ADA claim specifically, instead relying on their flawed *Ex parte Young* rationale. Dkt. 67 at 16. They thus forfeit any argument that Congress abrogated Eleventh Amendment immunity as to that claim. See *Series 17-03-615 v. Teva Pharms. USA, Inc.*, 785 F. Supp. 3d 904, 935 (D. Kan. 2025) (collecting forfeiture cases). They have similarly forfeited any argument that the rule from *United States v. Georgia*, 546 U.S. 151 (2006), applies here. See Dkt. 63 at 19. Plaintiffs' footnote request for "supplemental briefing" on *Georgia*, Dkt. 67 at 16 n.9, does not excuse their failure to respond to Defendants' two pages of argument on that precise issue.

IV. *Younger* abstention bars the relief Plaintiffs seek.

Plaintiffs concede that Colorado has an important interest in administering its juvenile delinquency system. Dkt. 67 at 17 n.10. And Plaintiffs do not dispute any of the following points raised by Defendants: they have ongoing juvenile delinquency cases; those cases are civil proceedings akin to criminal prosecutions; "Colorado juvenile courts determine whether a juvenile may be released, under what conditions, and whether those conditions have been satisfied;" and they may challenge their "continued detention, release conditions, placement delays, case planning, services, or CDHS' alleged failure to accommodate their disability-related needs" in those juvenile proceedings. See Dkt. 63 at 21-22. Neither of Plaintiffs' two bases for resisting *Younger* abstention hold water.

Plaintiffs' requested relief would interfere with pending juvenile proceedings. Plaintiffs' assertion that this action will not interfere with pending juvenile proceedings rests entirely on their vague and imprecise remedy theory. While Plaintiffs characterize

their claims as challenging executive-branch administration of “procedures, placements, and services,” Dkt. 67 at 17, *Younger* requires a functional examination of how the requested relief would operate, not acceptance of labels Plaintiffs assign to it, see Dkt. 63 at 20-21. Plaintiffs ask this Court to prescribe statewide requirements governing assessments, review, case planning, foster-care case management, placement capacity, disability services, the timing of release, and continuing federal monitoring. Dkt. 53 ¶¶ 238-39. In practice, the requested decree would regulate the processes through which the conditions imposed in pending juvenile proceedings are evaluated and satisfied.

The named Plaintiffs’ bond orders demonstrate the interference. Those orders [REDACTED]
[REDACTED] See Exs. A-C. Rather, the juvenile courts [REDACTED]
[REDACTED]
[REDACTED] See *id.* If the Court were to order Defendants to take different actions to ensure “timely” release, provide an “appropriate” placement, or implement “effective” assessments and case planning, see Dkt. 53 ¶ 239, it would necessarily depart from the terms of the existing bond orders, as there is no allegation that the Defendants failed to satisfy those orders’ release conditions. And any order from this Court would interfere with the juvenile court’s jurisdiction over third-party participants who are also responsible for meeting or approving release conditions. In effect, such determinations would substitute a broad federal judicial order for the individualized state-court process in the pending delinquency cases.

Plaintiffs’ effort to distinguish *Joseph A. ex rel. Wolfe v. Ingram*, 275 F.3d 1253 (10th Cir. 2002), underscores *Younger*’s application. Much like the plaintiffs in *Joseph A.*,

Plaintiffs seek to characterize their suit as targeting only executive-branch reform rather than a limitation on judicial power. See Dkt. 67 at 18-19. But in *Joseph A.*, the Tenth Circuit looked past Plaintiffs' labels, examining the requested remedies individually and requiring abstention from relief that regulated the recommendations, plans, and filings used in ongoing children's court proceedings. *Id.* at 1269. Similarly, while Plaintiffs have not sued the state judiciary directly, their requested relief here undisputedly would direct how state juvenile court orders are effectuated. Dkt. 67 at 18-19. Under *Joseph A.*, *Younger* precludes relief that would require federal courts to determine when the conditions imposed in a pending juvenile proceeding have been satisfied, or to supervise the participants charged with making that determination.

Nor can Plaintiffs avoid *O'Shea v. Littleton*, 414 U.S. 488 (1974). Appointment of a monitor and retention of federal jurisdiction alone would not necessarily trigger *Younger*. But Plaintiffs' proposed monitoring cannot be evaluated in the abstract. Because compliance with federal standards for "timely" release, "appropriate" placements, and "effective" planning requires recurring examination of live bond orders and the judgments of participants (like guardians *ad litem* and probation officers) in pending juvenile proceedings, the resulting decree would create the type of continuing federal oversight of state adjudicative processes that *O'Shea* prohibits. *Id.* at 500-02.

Plaintiffs' remaining cited cases do not support their theory. For instance, in *Jonathan R. ex rel. Dixon v. Justice*, 41 F.4th 316 (4th Cir. 2022), the court found that West Virginia's quarterly foster-care "status reviews"—in which the state court reviewed and approved proposed foster-care case plans, *id.* at 321-22—were "simply not 'of the

sort entitled to *Younger* treatment,” *id.* at 328 (citations omitted). But the court expressly *declined* to address the *Younger* questions that arose from class members who were involved in ongoing delinquency proceedings. *See id.* at 330. Here, those quasi-criminal juvenile delinquency proceedings are the *only* relevant judicial proceedings, and Plaintiffs seek to invent new standards governing whether release-related procedures are “effective,” whether placements and services are “appropriate,” and whether Defendants have acted quickly enough to ensure “timely” release in cases involving individualized judicial findings. Dkt. 53 ¶ 239. Implementing those standards necessarily would require this Court to interpret and enforce the provisions of state juvenile court orders.

Plaintiffs have not shown that the state forum is inadequate. Colorado’s juvenile courts exercise continuing authority over detention and conditional release. *See, e.g.,* C.R.S. §§ 19-2.5-103(1), 19-2.5-305(3), 19-2.5-306(3)-(4), and 19-2.5-606(1), (3)-(4). Thus, each named Plaintiff may: challenge whether their continued detention satisfies the governing criteria; seek review or modification of release conditions; present proposed community-based alternatives; address alleged delay in assessments or planning; and raise disability, developmental, behavioral-health, treatment, and educational needs bearing on detention and placement. *See* Dkt. 63 at 22; *see also* Exs. A-C.

Plaintiffs argue that Colorado courts are inadequate because Plaintiffs seek “systemic injunctive relief.” Dkt. 67 at 20. In doing so, Plaintiffs ignore binding caselaw holding that (1) a state forum is adequate for *Younger* purposes when the litigant has an opportunity to present their federal objections; and (2) *Younger* does not require the state court to provide the identical classwide remedy sought in federal court. *See* Dkt. 63 at 22

(citing *Moore v. Sims*, 442 U.S. 415, 425-26 (1979); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1291-92 (10th Cir. 1999)). Put differently, Plaintiffs cannot establish inadequacy by characterizing their injury as “classwide” or “systemic” and then observing that an individual juvenile delinquency proceeding cannot produce that remedy.

V. Plaintiffs fail to plausibly allege substantive due process claims (Counts I-II).

Plaintiffs disavow any claim that Defendants infringed a “fundamental” right, and they concede that the “shocks the conscience” standard applies. Dkt. 67 at 21 n.13. Yet their Opposition fails to meaningfully apply the “shocks the conscience” standard, which applies when officials’ conduct rises to the level of extreme “tortious executive action,” *Stepp v. Lockhart*, 168 F.4th 1286, 1313 (10th Cir. 2026), not mere policy disagreement.⁷

Plaintiffs’ “shocks the conscience” authority largely involves cases where the courts found in defendants’ favor. *See, e.g., Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 836 (1998) (finding no substantive due process violation and holding that “only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation”); *Stepp*, 168 F.4th at 1296 (assuming due process violation based on repeated and egregious conduct by teacher towards student, including “berating” the student, talking to

⁷ The majority of Plaintiffs’ cited cases do not discuss “shocks the conscience” claims. *Parham v. J.R.*, 442 U.S. 584, 601 (1979) discussed minors’ liberty interest in not being confined unnecessarily for medical treatment. *Meechaicum v. Fountain*, 696 F.2d 790, 791–92 (10th Cir. 1983), discusses “the right of an accused to freedom pending trial” in the context of an adult’s right to bail and not whether it shocks the conscience. *Dodds v. Richardson*, 614 F.3d 1185, 1192–93 (10th Cir. 2010), acknowledges a protected liberty interest in posting bail but not what type of related action shocks the conscience.

class about “drawing penises in notebooks,” and calling the student a “queer,” but finding the teacher was entitled to qualified immunity).

Plaintiffs’ reliance on *Browder v. City of Albuquerque*, 787 F.3d 1076 (10th Cir. 2015), shows just how far outside the realm of “shocks the conscience” cases the Amended Complaint falls. In *Browder*, the court found a substantive due process violation after a police officer ran a red light driving 66 m.p.h. without any official purpose and killed a woman. *Id.* Plaintiffs’ allegations are nowhere near the facts of *Browder*.⁸

Plaintiffs repeat their conclusory assertion that they are being unlawfully detained and declare—without authority—that such detention is “conscience shocking.” Dkt. 67 at 22. Yet Plaintiffs cannot credibly claim that either the Governor or Executive Director of CDHS personally engaged in any action that remotely approaches “conscience shocking” behavior. Their allegations regarding the state’s efforts to improve this system belie any such assertion. See, e.g., Dkt. 53 ¶¶ 93-102. In reality, Plaintiffs have not plausibly alleged that any delay in their placement was a result of anything other than good faith efforts by all involved—including third parties—to meet the conditions of the bond orders.

Plaintiffs’ claim concerning the foster system subclass does not fare any better.⁹

⁸ Plaintiffs’ citation to *Disability L. Ctr. v. Utah*, 180 F. Supp. 3d 998 (D. Utah 2016), is similarly unavailing. In that case, plaintiffs were individuals who had been declared incompetent to stand trial and were still being held in jail for indeterminate amounts of time that often exceeded the length of any potential sentence, in violation of state law. See *id.* at 1002-04. Here, in contrast, Plaintiffs do not allege they are incompetent to stand for their delinquency proceedings; nor do they allege a violation of state law. Moreover, the *Disability Law Center* court failed to analyze whether the official defendants’ conduct actually “shocked the conscience,” and other courts in this circuit have disagreed with its conclusion. See *Glendening v. Howard*, 707 F. Supp. 3d 1089, 1109 (D. Kan. 2023).

⁹ Defendants did not waive this argument. See Dkt. 63 at 25.

Plaintiffs rely on the state's duty to keep foster children in DHS custody reasonably safe from harm. Dkt. 67 at 23-24. Yet "[e]ven in this situation, ... the State has considerable discretion in determining the nature and scope of its responsibilities." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 n.7 (1989) (citation modified). The State's efforts to locate proper placements for detained youth are fully consistent with this duty. Plaintiffs do not plausibly allege that the State has failed to provide for their basic human needs ("food, shelter, clothing, medical care, and reasonable safety" *id.* at 200). Nor do Plaintiffs allege that Defendants failed to investigate allegations of abuse. *Compare Gutteridge v. Oklahoma*, 878 F.3d 1233 (10th Cir. 2018).

Plaintiffs' reliance on *Schwartz v. Booker*, 702 F.3d 573, 577–78 (10th Cir. 2012), illustrates the kind of conduct that shocks the conscience in the foster-care context. That case involved allegations of physical abuse by foster parents, which were not acted upon. Later, the child was found locked in a closet in an emaciated state and eventually died from cardiac arrest caused by severe dehydration and starvation. Taking the Amended Complaint's well-pled facts as true, there can be no comparison here.

VI. Plaintiffs fail to plausibly allege a procedural due process claim (Count III).

Plaintiffs fail to allege that Defendants deprived them of a protected interest in life, liberty, or property. The Opposition recasts their alleged interest as a "protected liberty interest in freedom from detention when it serves no legitimate state interest." Dkt. 67 at 25. But their sole citation is to *Parham*, 442 U.S. at 600, a case in which plaintiffs—minors who had been voluntarily admitted to mental hospitals by a parent or guardian—had "a substantial liberty interest in not being confined unnecessarily for medical treatment."

Here, Plaintiffs do not allege they are being confined for the *purpose* of medical treatment. They were detained because they were charged with felonies.

Plaintiffs have no liberty interest in being immediately released when their court orders condition release on meeting certain conditions and approvals. See *supra* at 1-2. The U.S. Supreme Court has recognized that a juvenile's interest in freedom from institutional restraints "must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody." *Schall v. Martin*, 467 U.S. 253, 265 (1984). The Court upheld the use of "preventive detention" for juveniles, finding the state's legitimate interest in protecting the juvenile and the community from harmful pretrial conduct, including pretrial crime, comported with the notion of "fundamental fairness." *Id.* at 268.

Plaintiffs undermine their claim by highlighting the state law upon which it depends. Dkt. 67 at 25. Plaintiffs imply that Colorado law mandates immediate release upon the juvenile court's order. See *id.* But Plaintiffs' court orders demonstrate that release is dependent on certain mitigating conditions being met. *Supra* at 1-2. Thus, to the extent Plaintiffs claim any due process interest based on state law, it is only to be released to placement consistent with those orders. Plaintiffs do not allege any violation of that interest. Indeed, the named Plaintiffs do not discuss the specific terms of their orders.

Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005), is instructive. In that case, the U.S. Supreme Court declined to find a protected property interest in the police's enforcement of a restraining order, which specifically directed police officers to "use every reasonable means to enforce" the order. *Id.* at 752. Despite this language, the Court determined that police enforcement was not mandatory and held that the plaintiff was not

entitled to enforcement of the order. This case is even further afield. Plaintiffs do not point to any specific language in the statute or juvenile court orders, much less language requiring Defendants to “use every reasonable means” to meet those conditions.

Because Plaintiffs fail to allege any protected interest, this Court need not examine the remaining *Mathews v. Eldridge*, 424 U.S. 319 (1976) factors. *Contra* Dkt. 67 at 24-26. But even if it does, there is no allegation that Plaintiffs have been denied process to which they are due. Plaintiffs do not contest that the juvenile justice system provides adequate process to detain them *prior to* a bond hearing as well as to determine the conditions of their bond order. See Dkt. 67 at 26. Yet, they claim a violation of their right to notice and opportunity to be heard when the State is attempting to provide the very thing for which they claim an interest: a placement that complies with the juvenile court’s bond order.

Plaintiffs’ reliance on *Brown v. Montoya*, 662 F.3d 1152, 1169–70 (10th Cir. 2011), which discusses the need for the state to provide a written justification of disciplinary action, is inapposite here, where the State is attempting to obtain the very thing that Plaintiffs seek. Similarly, Plaintiffs’ reliance on *JL v. New Mexico Dep’t of Health*, 165 F. Supp. 3d 996, 1036 (D.N.M. 2015), which pertains to the State’s efforts to transfer disabled residents without their consent and without an opportunity to be heard cannot govern this circumstance, where Plaintiffs have an opportunity to participate in their bond hearing and have continued involvement through their next friend or counsel.

Finally, Colorado’s interest in a safe and effective process for pre-adjudication detention is clearly shown by statute, which permits the juvenile court to detain certain juveniles unless mitigating circumstances exist. C.R.S. § 19-2.5-305(3)(a)(IV)(C). As

noted above, the Supreme Court in *Schall* recognized a state's interest in protecting the juvenile and the community by using preventive detention. To the extent those concerns can be reduced through community placement that complies with mitigating conditions, the State has an equivalent interest in ensuring that those conditions are met.

VII. Plaintiffs fail to state a claim under the ADA or the Rehabilitation Act.

Plaintiffs appear to have abandoned any traditional claim under the ADA or the Rehabilitation Act. They no longer contend that “Defendants fail[ed] to make reasonable modifications to their policies, practices, and procedures that are necessary to avoid discrimination against Plaintiffs . . . on the basis of disability.” Dkt. 53 ¶¶ 227, 236. They do not rebut the fact that they failed to request any modifications; nor do they offer any argument that the need for modifications was obvious. *Compare* Dkt. 63 at 28-29 *with* Dkt. 67 at 27-30. Nor do Plaintiffs explain, in even conclusory form, how they were discriminated against “by reason of” their disability.

Plaintiffs’ alternative theory—that their ADA and Rehabilitation Act claims survive under *Olmstead v. L.C.*, 527 U.S. 581 (1999)—is incorrect. *Olmstead* prohibits unjustified institutionalization of disabled persons; it neither addresses nor restricts the detention of juveniles alleged to be delinquent. *See id.* at 600. “Institutionalization” in *Olmstead* referred to the continuing placement of two non-incarcerated individuals, who were “voluntarily admitted” to a state mental hospital for psychiatric treatment, after hospitalization was no longer necessary. *Id.* at 593. Application of the integration mandate

is limited to facilities where individuals are placed for disability-related treatment.¹⁰

Although the Tenth Circuit has held that an *Olmstead* claim can be viable even where disabled individuals are at risk of unnecessary institutionalization, *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181-82 (10th Cir. 2003), it has soundly rejected expansion of *Olmstead* “beyond the context of institutionalization,” *Cohon ex rel. Bass v. N.M. Dep’t. Of Health*, 646 F.3d 717, 729 (10th Cir. 2011). Plaintiffs have not alleged that they are institutionalized within the meaning of *Olmstead*. Rather, they allege they were *incarcerated* while awaiting trial on allegations of criminal misconduct. Dkt. 53 ¶¶ 17, 32, 46. Any ancillary provision of treatment services does not convert youth detention centers into treatment facilities. And there is no basis to extend *Olmstead* to a case where Plaintiffs’ detention was involuntary and imposed to protect community safety.

Plaintiffs’ cited decisions from other jurisdictions are materially distinguishable. In *M.J. v. District of Columbia*, 401 F. Supp. 3d 1, 4-6 (D.D.C. 2019), two youth who were at risk of hospitalization alleged that D.C. did not provide medically necessary preventative services required by Medicaid. One was in juvenile detention for some period during the pendency of the case, but she neither alleged, nor did the court find, that *Olmstead* mandated her release from detention. See *id.* at 9-10. Similarly, in *Isaac A.* “[e]ach Individual Plaintiff ha[d] experienced repeated emergency room visits and/or repeated admissions to psychiatric institutions” and alleged the State of Georgia failed to provide

¹⁰ This reading cannot be reasonably disputed. For example, Black’s defines “institution” as “[a]n established organization, esp. one of a public character, such as a facility for the treatment of mentally disabled persons.” Black’s Law Dictionary (12th ed. 2024).

them with “medically necessary” services to prevent institutionalization. 775 F. Supp. 3d 1296, 1311, 1317 (N.D. Ga. 2025).

S.R. v. Pa. Dep’t. Of Human Servs, 309 F. Supp. 3d 250 (M.D. Pa. 2018), does not support their argument either. The *S.R.* plaintiffs were involved in the dependency system and had waited *years* for an appropriate placement. *Id.* at 253-54. While one plaintiff was placed in a juvenile detention center, he remained incarcerated *after* his charges were dismissed. *S.R.* Compl. at ¶ 11 (2017 WL 11930622). In contrast, Plaintiffs were detained pursuant to pending delinquency charges. Dkt. 53 ¶¶ 18, 33, 47.

Similarly, Plaintiffs’ reliance on *Disability Rights Maryland, Inc.* 817 F. Supp. 3d 303, is misplaced. There, the state failed to provide restorative services or place adult criminal defendants in treatment facilities after they had been found incompetent to stand trial, resulting in “functionally indefinite detention.” *Id.* at 310. None of the named Plaintiffs have alleged they had been found incompetent to proceed and subjected to “functionally indefinite detention.” Indeed, Plaintiffs have alleged only that their release was delayed.

In the absence of any meaningful allegation of segregation or refusal to provide an entitlement “by reason of” their disability, *see* Dkt. 63 at 27, Plaintiffs’ claim amounts to nothing more than discontent that they were not immediately released from detention—a frustration shared by all detained youth regardless of disability status. That claim does not entitle Plaintiffs to relief under any colorable legal theory.

CONCLUSION

For these additional reasons, this Court should dismiss the Amended Complaint.

Respectfully submitted this 24th day of August 2026.

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