No. 17-60805

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

COUNTY OF LAUDERDALE; JUDGE LISA HOWELL, In her official capacity;
JUDGE VELDORE YOUNG, In her official capacity,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS APPELLANT

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STATEMENT REGARDING ORAL ARGUMENT

The United States requests oral argument in this case.

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COUNTY OF LAUDERDALE; JUDGE LISA HOWELL, In her official capacity; JUDGE VELDORE YOUNG, In her official capacity,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR THE UNITED STATES AS APPELLANT

JURISDICTIONAL STATEMENT

This case involves a civil action brought by the United States under 34 U.S.C. 12601. The district court had jurisdiction under 28 U.S.C. 1331 and 1345. ROA.1268-1269. On September 30, 2017, the district court issued a final order and judgment dismissing the United States' claims with prejudice. ROA.1267-1283. The United States filed a timely notice of appeal on November 28, 2017. ROA.1319. This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

1. Whether 34 U.S.C. 12601 applies to judges responsible for the administration of juvenile justice in state courts.

2. If so, whether the district court erred in concluding that the doctrine of absolute judicial immunity nevertheless insulates such judges from suit for declaratory and equitable relief under 34 U.S.C. 12601.

3. Whether the district court erred in dismissing the United States' claims against Lauderdale County.

STATEMENT OF THE CASE

1. The Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. 12601 (formerly 42 U.S.C. 14141) authorizes the Attorney General to bring a civil action for declaratory and equitable relief to eliminate systemic constitutional violations in the administration of juvenile justice. Under this authority, the Department of Justice (DOJ or the Department) investigates complaints of constitutional violations in the operation of state juvenile courts and has reached Memoranda of Agreement with two juvenile court systems addressing constitutional deficiencies in those courts' functioning.[1]

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[1] See Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County (Dec. 17, 2012), available at https://www.justice.gov/iso/opa/resources/8772012121810594892515 7.pdf; Memorandum of Agreement Between the United States Department of Justice and

(continued…)

2. This case arises from an investigation into the administration of juvenile justice in Lauderdale County, Mississippi. In Mississippi, juvenile justice occurs at the county level, in the Youth Court Division of the county and chancery courts. See Miss. Code Ann. § 43-21-107(1)-(2) (2015). With a few limited exceptions, the Youth Courts have "exclusive original jurisdiction in all proceedings concerning" a child alleged to have committed a delinquent act. Miss. Code Ann. § 43-21-151(1) (2015); see also Miss. Code Ann. § 43-21-105(j) (2015) (defining "delinquent act").

The County Boards of Supervisors are responsible for funding the Youth Courts' operations, Miss. Code Ann. § 43-21-123 (2015), including the salaries of the Youth Court judges, *id.* § 9-9-11 (2015), prosecutors, *id.* § 43-21-117(3) (2015), public defenders, *id.* § 19-9-96 (2015), and other court personnel, *id.* § 43-21-119 (2015). Beyond funding, however, the Boards of Supervisors have no control over the Youth Courts' daily operations or the conduct of their judges or the judges' designees. See *Touart* v. *Johnston*, 656 So.2d 318 (Miss. 1995).

3. In December 2011, the Justice Department opened an investigation into allegations that government entities at the state, county, and municipal level in Lauderdale County, Mississippi, were systematically violating the constitutional

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the St. Louis County Family Court (Dec. 14, 2016), available at https://www.justice.gov/crt/case-document/file/918581/download.

rights of children in the juvenile justice system. Following a comprehensive investigation, the Department issued a letter finding reasonable cause to believe that the Meridian Police Department, Lauderdale County Youth Court, and State of Mississippi through its juvenile justice agencies collectively operated a system wherein Meridian public school children were arrested for minor school infractions, processed through the juvenile justice system with few procedural safeguards, and re-incarcerated for violating probation conditions that were both arbitrary and not explained to them.[2]

4. In light of these findings, the United States brought this civil action under 34 U.S.C. 12601 (formerly 42 U.S.C. 14141) against the State of Mississippi, the Mississippi Department of Human Services, the Mississippi Division of Youth Services, the City of Meridian, the County of Lauderdale, and the County's two Youth Court judges in their official capacities, alleging a pattern or practice of constitutional violations in the administration of juvenile justice.

The United States' claims against the City of Meridian and the State of Mississippi and its agencies were resolved through settlement agreements in 2015. ROA.615-649. With respect to the remaining defendants—Lauderdale County and

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[2] See Findings Regarding Department of Justice Investigation of Lauderdale County Youth Court, Meridian Police Department, and Mississippi Division of Youth Services (Aug. 10, 2012), available at https://www.justice.gov/iso/opa/resources/2642012810121733674791.pdf.

its two Youth Court judges sued in their official capacities—the complaint alleges, among other things, that:

- The decision whether an arrested child will be incarcerated is made by an intake officer without a hearing, probable cause determination, advising of rights, or attorney present (ROA.45-46);
- Arrested children can remain incarcerated for up to five days before receiving a detention hearing before a Youth Court judge (ROA.48-49);
- The Youth Court judges do not base their detention decision on whether the arrest was supported by probable cause, and detention decisions are sometimes made without the child present (ROA.48-49);
- The Youth Court does not consistently provide children an attorney for detention, adjudication, or disposition hearings. When a public defender is provided, the child is not given a meaningful opportunity to consult with him, and the representation is frequently perfunctory (ROA.48-50);
- The standard juvenile probation contracts enforced by the Youth Court judges state that suspension from school constitutes a probation violation but do not give notice as to what sort of behavior leads to suspension (ROA.51-54);
- Youth suspended for violating probation are often detained for days without a hearing, and the probation revocation hearings that eventually occur exist solely to determine punishment and are not a hearing on the substantive violation (ROA.51-54); and
- Because Lauderdale County has closed its juvenile detention facility, children awaiting juvenile hearings are held in a detention center approximately 80 miles away, where they do not have access to their attorneys (ROA.56-57).

The complaint alleged that these and other actions and inactions by Lauderdale County and its Youth Court judges constituted a pattern or practice of

constitutional violations under the Fourth, Fifth, and Fourteenth Amendments (ROA.61-64 (Counts 2-4)), and requested the following declaratory and equitable relief to remedy that pattern or practice:

- A declaration that defendants' practices as alleged violate the Fourth, Fifth, and Fourteenth Amendments;
- An order permanently enjoining defendants from engaging in the unconstitutional conduct alleged;
- An order requiring defendants to promulgate and effectuate policies protecting juveniles' constitutional rights;
- An order for equitable relief including the creation of alternatives to detention and the review and expungement of juvenile records of children who have been harmed by defendants' unconstitutional practices; and
- "[A]ny such additional relief as the interests of justice may require."

ROA.64-65.

The Youth Court judges filed two motions to dismiss. First, the judges moved to dismiss on the ground that the federal court should abstain from hearing the case under *Younger* v. *Harris*, 401 U.S. 37 (1971), which held that federal courts may not stay or enjoin pending state-court criminal prosecutions except under special circumstances. ROA.218-233. The United States opposed the motion, arguing that *Younger* abstention does not apply when the United States is the plaintiff, that abstention would contravene Congress's intent in enacting 34 U.S.C. 12601 (then 42 U.S.C. 14141), and that, in any event, the conditions for

Younger abstention are not met here. ROA.239-255. The district court denied the judges' *Younger* motion, finding *Younger* abstention "inapposite." ROA.285.[3]

The judges filed a second motion to dismiss on November 25, 2014, arguing, in relevant part, that absolute judicial immunity bars the United States' claims against them. ROA.447-467.[4] Lauderdale County joined the motion on the ground that the claims against it were entirely "based upon the alleged actions or inactions of" the defendant-judges. ROA.470-471.

In response, the United States argued that the Youth Court judges are not immune from this action because, under *Pulliam* v. *Allen*, 466 U.S. 522 (1984), absolute judicial immunity applies only to suits for damages, whereas the complaint here seeks only declaratory and equitable relief. ROA.495-497. In a

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[3] The judges renewed their motion to dismiss based on *Younger* abstention on November 25, 2014. ROA.428-443. That motion was rendered moot when the district court granted the judges' second motion to dismiss. See ROA.1282.

[4] The motion also argued that the judges are entitled to qualified immunity and that the district court lacks jurisdiction under the *Rooker-Feldman* doctrine, which bars federal courts from sitting in review of state-court decisions. ROA.461-465; see *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983). The district court rejected the judges' *Rooker-Feldman* argument and did not reach their qualified immunity argument, having concluded that they are entitled to absolute immunity. ROA.1275-1280. The judges' qualified immunity argument fails, however, for the same reason their absolute immunity argument fails (see *infra* pp. 23-24): qualified immunity, like absolute immunity, applies only to damages actions, not to suits for declaratory or injunctive relief. *Orellana* v. *Kyle*, 65 F.3d 29, 33 (5th Cir. 1995).

separate pleading, the United States argued that the County "offer[ed] no legitimate basis for dismissing the United States' claims against it" (ROA.509), and emphasized that the County would be integral to the implementation of any equitable relief given its responsibility for funding the Youth Court (ROA.513).[5]

At a status hearing on June 27, 2017, the district court asked the United States to provide supplemental briefing addressing, among other things, whether 34 U.S.C. 12601 (then 42 U.S.C. 14141) applies to the Youth Court judges. See ROA.1487-1489, 1504, 1508. In its supplemental brief, the United States argued that the plain language of Section 12601 encompasses the Youth Court judges because they are "officials" of a "governmental agency with responsibility for the administration of juvenile justice," and that the legislative history of Section 12601 supports this reading. ROA.1235-1238 (quoting 34 U.S.C. 12601); see also ROA.498-500 (making the same argument in an earlier pleading). The judges filed a response arguing that Section 12601 does not extend to judges because neither the statute nor the legislative history specifically mentions judges and there are no reported Section 12601 cases involving judges as defendants. ROA.1251-1252.

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[5] The Youth Court judges, through both their lawyer and their own testimony, repeatedly urged that they lacked the power to fully remedy many of the constitutional violations alleged and that only the County, which "has the purse strings," could do so. ROA.1500; see also ROA.450, 1357, 1366-1367, 1373-1375, 1425.

The district court granted the judges' second motion to dismiss. ROA.1282. Although the court acknowledged that, under *Pulliam*, absolute judicial immunity does not extend to claims seeking only declaratory and injunctive relief, it concluded that the relief the United States sought is "much more than injunctive relief" because it would require the district court to oversee the Youth Court's procedures to ensure that they comply with due process. ROA.1279-1280. Accordingly, the court held that the judges were entitled to absolute judicial immunity. ROA.1280. The court also concluded that dismissal as to the judges was required because, in its view, Section 12601 does not extend to "[s]tate courts or other branches of the judiciary" but only to "police departments and other branches of law enforcement." ROA.1281-1282. The Court dismissed the claims against Lauderdale County as well, concluding that the County's "juridical fate" was "inextricably intertwined with that of the judges." ROA.1267, 1282.

SUMMARY OF ARGUMENT

The district court erred in dismissing the United States' claims against Lauderdale County and its two Youth Court judges.

First, the district court erred in concluding that 34 U.S.C. 12601 does not apply to the Youth Court judges. Section 12601 prohibits "officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles" from engaging in a pattern or practice of

constitutional violations. 34 U.S.C. 12601(a). There is no question that the Youth Court bears responsibility for the administration of juvenile justice in Lauderdale County, nor that the defendant-judges are officials of that court. Thus, application of Section 12601 here turns on whether the Lauderdale County Youth Court is a "governmental agency" within the meaning of the statute.

This Court should interpret the term "any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles" in Section 12601 to include state juvenile court systems. Although courts are not typically described as "agencies" in ordinary parlance, both the Supreme Court and this Court have admonished that statutory terms cannot be construed in isolation but must be interpreted in light of their context and the statute's purpose.

Here, the surrounding words and broader statutory context and purpose of Section 12601 suggest that Congress intended the term "any governmental agency" to reach state juvenile courts. The modifying phrase "with responsibility for the administration of juvenile justice or the incarceration of juveniles," 34 U.S.C. 12601(a), strongly supports reading "governmental agency" to include juvenile courts, as such courts are the locus of where juvenile justice administration occurs and are directly responsible for juvenile sentencing. Congress's use of the broad term "any" to modify "governmental agency," instead of a qualifier like

"executive," further indicates that it did not intend to limit Section 12601's application to entities within the executive branch. Given that the stated purpose of Section 12601 is to eliminate systemic constitutional violations in the administration of juvenile justice, reading Section 12601 to exclude juvenile courts—the principal governmental bodies administering juvenile justice—would frustrate the purpose of the statute.

Second, the district court erred in concluding that the Youth Court judges possess absolute judicial immunity from this action. Judges are judicially immune only from actions seeking damages, not those seeking only injunctive or declaratory relief against them in their official capacities, which is all the United States seeks here. Indeed, Section 12601 does not authorize the United States to seek damages. To the extent the district court was concerned that the relief the United States seeks would unduly intrude on state-court operations—a concern based largely on a misapprehension of the relief requested—the Supreme Court has made clear that such concerns should be addressed by tailoring the scope of any relief granted, not by dismissing the case at the outset on immunity grounds.

Finally, because the court's dismissal of the claims against Lauderdale County was premised on its erroneous granting of the judges' dismissal motion, this Court should reinstate the United States' claims against the County as well.

ARGUMENT

I

SECTION 12601 OF TITLE 34 APPLIES TO STATE-COURT JUDGES RESPONSIBLE FOR THE ADMINISTRATION OF JUVENILE JUSTICE

A. Standard Of Review

Whether 34 U.S.C. 12601 applies to Youth Court judges is a pure question of statutory interpretation, which this Court reviews *de novo*. See *Forgan* v. *Howard Cty.*, 494 F.3d 518, 520 (5th Cir. 2007).

B. Youth Court Judges Are Officials Of A Governmental Agency With Responsibility For The Administration Of Juvenile Justice

The district court erred in concluding that 34 U.S.C. 12601 does not apply to the Youth Court judges. Subsection (a) of Section 12601 provides, in full:

> It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or *by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles* that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

34 U.S.C. 12601(a) (relevant language in italics). The defendants conceded below, as they must, that the Youth Court bears "responsibility for the administration of juvenile justice" in Lauderdale County. See ROA.451, 461 (noting that Miss. Code Ann. § 43-21-151 gives the Youth Court "exclusive original jurisdiction" over all juvenile delinquency matters). There also is no dispute that the defendant-

judges are "officials or employees" of the Youth Court. 34 U.S.C. 12601(a). This case turns, then, on whether the Youth Court, as a "branch of the judiciary," constitutes a "governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles" within the meaning of the statute. ROA.1281. This Court should hold that it does.

When faced with issues of statutory construction, the Court's first task is to determine whether the statutory text is plain and unambiguous. *United States* v. *Kaluza*, 780 F.3d 647, 658 (5th Cir. 2015). If it is, the inquiry begins and ends with the text. *Ibid.* If, on the other hand, the text is "susceptible to more than one reasonable interpretation," the Court must resolve that ambiguity. *Ibid.*; see *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 345 (1997). Because Section 12601 does not define the term "any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles," 34 U.S.C. 12601(a), that term should be interpreted according to its "ordinary and natural meaning and the overall policies and objectives of the statute," *NPR Inv., LLC* v. *United States*, 740 F.3d 998, 1007 (5th Cir. 2014). "Whether a statutory term is unambiguous, however, does not turn solely on dictionary definitions of component words." *Yates* v. *United States*, 135 S. Ct. 1074, 1081 (2015) (plurality op.); see also *Kaluza*, 780 F.3d at 658-659 (concluding that the statutory phrase at issue was ambiguous notwithstanding the fact that the "ordinary meaning" of its

component words "easily encompasse[d] Defendants"). Rather, the "plainness or ambiguity of statutory language is determined by reference to the language itself" as well as "the specific context in which the language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341.

Applying these principles, the phrase "any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles" in Section 12601(a) should be construed to encompass state juvenile courts such as the Lauderdale County Youth Court. It is true that, "[i]n ordinary parlance," courts are not typically "described as 'departments' or 'agencies' of the Government." *Hubbard* v. *United States*, 514 U.S. 695, 699 (1995) (holding that a court is not an agency for purposes of a federal statute criminalizing false statements made "in any matter within the jurisdiction of any department or agency of the United States"). The word "agency" in Section 12601(a), however, cannot be "construed in a vacuum." *United States* v. *Flores-Gallo*, 625 F.3d 819, 824 (5th Cir. 2010). Rather, it must be interpreted "in its context and in light of the terms surrounding it." *Leocal* v. *Ashcroft*, 543 U.S. 1, 9 (2004); see also *Deal* v. *United States*, 508 U.S. 129, 132 (1993) (recognizing the "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used").

Here, the phrase modifying "governmental agency"—"with responsibility for the administration of juvenile justice or the incarceration of juveniles"—strongly suggests that Congress intended the term "any governmental agency" to include state juvenile courts. 34 U.S.C. 12601(a). Juvenile courts, after all, are the governmental entities with principal responsibility for administering juvenile justice in our country. See Preston Elrod & R. Scott Ryder, *Juvenile Justice: A Social, Historical, and Legal Perspective* 246 (4th ed. 2014) (describing the juvenile court as "the heart of" and "the most powerful institution within juvenile justice"); see also *Court*, Black's Law Dictionary (10th ed. 2014) (defining "court" as "[a] tribunal constituted to administer justice"); Miss. Code Ann. § 43-21-125(3)(b) (2015) (recognizing that the "administration of juvenile justice in the state" occurs in the Youth Courts). And state juvenile courts also bear significant "responsibility for * * * the incarceration of juveniles," as juvenile-court judges are the officials who determine youth sentences. 34 U.S.C. 12601(a).

In Mississippi, Youth Court judges bear even greater responsibility for juvenile incarceration beyond their role in sentencing. The Mississippi Attorney General interprets state law as placing "the legal responsibility for administering the youth detention facility" with the Youth Court judge. Mississippi Office of the Attorney General, Opinion No. 2014-00441, *Harry Sanders*, 2014 WL 7642346, *2 (Dec. 1, 2014); see *In re Assessment of Ad Valorem Taxes*, 854 So. 2d 1066,

1071 (Miss. 2003) (explaining that State Attorney General opinions, while "not binding," are "useful in providing guidance" on questions of State law). Thus, any lawsuit brought under Section 12601(b) to eliminate a pattern or practice of constitutional violations in a county juvenile detention center would necessarily run against the Youth Court judges for that county, as they bear the ultimate "responsibility for * * * the incarceration of juveniles" in Mississippi. 34 U.S.C. 12601(a).

While other actors unquestionably play a role in the juvenile justice system as well, it seems unlikely that Congress would have wanted to give the Attorney General the power to sue the subsidiary players in the system but not to rectify systemic constitutional violations committed by the governmental entities actually administering juvenile justice and sentencing juveniles. Indeed, Congress's stated purpose in authorizing the Attorney General to bring pattern-or-practice suits under Section 12601 was "to eliminate" systemic violations of federal constitutional and statutory rights in law enforcement and the juvenile justice system. 34 U.S.C 12601(b). Given the central role that state juvenile courts play in the administration of juvenile justice and the incarceration of juveniles, construing Section 12601 to *exclude* them would frustrate the statute's objectives.

Congress's use of the broad term "any" also indicates that it did not intend to restrict the term "governmental agency with responsibility for the administration of

juvenile justice" only to bodies within the executive branch. 34 U.S.C. 12601(a). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (citation omitted); see also *Tula-Rubio* v. *Lynch*, 787 F.3d 288, 293 (5th Cir. 2015) ("The use of the word 'any' to modify a term suggests a broad meaning." (citation and quotation marks omitted)). Agencies, of course, are not limited to the executive branch but exist within all three branches of government, including the judicial branch.[6] Here, Congress did not restrict Section 12601 to "executive agencies"—a limitation it has used elsewhere in the Code.[7] Nor did Congress indicate any intent to exclude the judicial branch from Section 12601's

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[6] Common examples of judicial agencies include the United States Sentencing Commission, *United States* v. *Bell*, 991 F.2d 1445, 1449 (8th Cir. 1993), the United States Probation Office and Pretrial Services Agency, *United States* v. *Combs*, 267 F.3d 1167, 1173 (10th Cir. 2001), and State bars and boards of law examiners, *Dubuc* v. *Michigan Bd. of Law Examiners*, 342 F.3d 610, 615 (6th Cir. 2003). See also 5 U.S.C. 3401 (defining "agency" to encompass "an agency in the judicial branch" for purposes of statute governing part-time federal employment). Examples of federal legislative agencies include the Government Printing Office, the Congressional Budget Office, and the Government Accountability Office. See *Colonial Press Int'l, Inc.* v. *United States*, 788 F.3d 1350, 1357 (Fed. Cir. 2015); *Cause of Action* v. *National Archives and Records Admin.*, 753 F.3d 210, 214 (D.C. Cir. 2014).

[7] See, *e.g.*, 5 U.S.C. 2301, 2302(a)(2)(C) (federal merit system); 40 U.S.C. 621(4) (federal property management); 41 U.S.C. 133 (federal procurement).

purview.[8] Rather, by using the expansive term "any" to modify "governmental agency," Congress manifested an intent that Section 12601's protections would extend to *all* governmental entities bearing responsibility for the administration of juvenile justice and the incarceration of juveniles, regardless of which branch of government they fall into.

The Supreme Court's decision in *Robinson* is instructive. There, the question was whether the term "employees" in the anti-retaliation provision of Title VII of the Civil Rights Act, 42 U.S.C. 2000e-3(a), includes former employees or only current ones. *Robinson*, 519 U.S. at 339. The Court acknowledged that, "[a]t first blush, the term 'employees' * * * would seem to refer to those having an existing employment relationship with the employer in question." *Id.* at 341. The Court also noted that, when Congress has intended the term "employee" to encompass former employees in other statutes, it has specifically defined it as such. *Ibid.* And the Court recognized that there are other "sections of Title VII where, in context, use of the term 'employees' refers unambiguously to a current employee," not a former one. *Id.* at 343.

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[8] See, *e.g.*, 5 U.S.C. 551(1)(B), 701(b)(1)(B) (defining "agency" specifically to exclude "the courts of the United States" for purposes of the Administrative Procedures Act); 5 U.S.C. 552(f) (limiting application of the Freedom of Information Act to agencies "in the executive branch of the Government" and "any independent regulatory agency").

Nevertheless, the Court concluded that, based on "the specific context in which [the term "employees"] is used," as well as "the broader context of the statute as a whole," the term "employees" in the anti-retaliation provision should be construed to include former employees. *Robinson*, 519 U.S. at 341. Specifically, the Court observed that other sections of Title VII "plainly contemplate that former employees will make use of [its] remedial mechanisms"—for example, Title VII prohibits discriminatory discharge, a claim that can only be brought by a former employee. *Id.* at 345; see also *id.* at 342 (noting that Title VII authorizes "reinstatement" of employees as an affirmative remedial action). Thus, the Court reasoned, "it is far more consistent to include former employees within the scope of 'employees' protection by" the anti-retaliation provision, as permitting employers to retaliate against a former employee who complains that she was unlawfully discharged would undermine the protection against unlawful discharge. *Id.* at 345. The Court also noted that the primary purpose of the anti-retaliation provision is to allow employees "unfettered access" to Title VII's remedial mechanisms, and that reading the term "employees" to exclude former employees would frustrate that purpose "by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC." *Id.* at 346.

Similarly here, the "specific context" in which the term "agency" is used, "the broader context of the statute as a whole," and the statutory purpose all

suggest that Congress intended the term "any governmental agency" in Section 12601 to include state juvenile courts. See *Robinson*, 519 U.S. at 341. Just as Congress did not expressly define "employee" to include former employees in Title VII's anti-retaliation provision, despite having done so elsewhere, see *ibid.*, Congress did not expressly define "agency" in Section 12601 to include courts as it has done in other statutes.[9] Yet, as with the term "employee" in *Robinson*, the fact "that other statutes have been more specific in" defining the word "agency" to include courts "proves only that Congress *can* use the unqualified term '[agency]'" in a more limited manner, "not that it did so in this particular statute." See *id.* at 341-342. Here, as explained above, the surrounding words and statutory purpose to "eliminate" systemic constitutional violations in the "administration of juvenile justice," 34 U.S.C. 12601, strongly suggest that Congress intended the term "any governmental agency" in Section 12601 to encompass state juvenile courts. "[T]o hold otherwise would effectively vitiate much of the" enforcement power Congress gave the Department to ferret out and eliminate systemic constitutional violations in the administration of juvenile justice. See *Robinson*, 519 U.S. at 345.

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[9] See, *e.g.*, 5 U.S.C. 3371 (defining "federal agency" for purposes of statute governing assignment of employees to and from states to include "a court of the United States"); 22 U.S.C. 6106 (defining "agency" for purposes of the Mansfield Fellowship Program to include "any court of the judicial branch").

The district court's narrow interpretation confining Section 12601 to "police departments and other branches of law enforcement" (ROA.1281-1282) cannot be correct. As noted above, Section 12601 prohibits a pattern or practice of rights deprivations by "law enforcement officers *or* by officials or employees of any governmental agency" responsible for administering juvenile justice. 34 U.S.C. 12601(a) (emphasis added). The district court's reading would render superfluous the portion of the provision referring to juvenile justice administration. See *Flores-Gallo*, 625 F.3d at 823 (recognizing the "cardinal principle of statutory construction" that statutes should be interpreted in a way that "no clause, sentence, or word shall be superfluous"). That the section is titled "Police Pattern or Practice" (ROA.1281) is simply a vestige of the fact that earlier versions of the bill applied only to law enforcement officers; its extension to actors in the juvenile justice system, as explained below, came via a late-stage amendment by Senator Moseley Braun. The title of a statute cannot justify reading out an entire clause. See *Knapp* v. *United States Dep't of Agric.*, 796 F.3d 445, 465 (5th Cir. 2015).[10]

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[10] That there are no reported cases involving Section 12601 suits against judges—the district court's other rationale (see ROA.1281-1282)—simply reflects the fact that no prior Section 12601 investigation by the Justice Department into a juvenile court system has ever reached contested litigation (see ROA.1236 n.3; ROA.1494-1495). Indeed, there are very few reported cases involving Section 12601 generally, as most investigated cases are resolved through settlement agreements, obviating the need for contested litigation.

Finally, although it is not necessary to consider in light of the textual analysis above, the legislative history of Section 12601 supports construing it to encompass juvenile court systems. See *Kaluza*, 780 F.3d at 665-667. Section 12601 was enacted as part of a comprehensive crime control bill, the Violent Crime Control and Law Enforcement Act of 1994. In a hearing on the bill, Senator Carol Moseley Braun explained that she sponsored the language extending the Attorney General's pattern-and-practice authority to officials and employees of juvenile justice systems—prior versions of the bill had applied it only to law enforcement officers, see, *e.g.*, H.R. Rep. No. 102-242, pt. 1 (1991)—to ensure that, "to the extent that this crime bill causes more youth to come into contact with the juvenile justice system," that system be administered in a non-discriminatory manner. 139 Cong. Rec. 30,589 (1993). In so doing, Senator Moseley Braun noted that, "in many jurisdictions, blacks are much more likely than whites to be *referred to court, formally charged, and institutionalized in the juvenile justice system*." *Ibid.* (emphasis added); see also *ibid.* (observing racial disparities in the rate at which juveniles are sentenced to custody relative to the rate at which they are arrested). These passages suggest that the sponsor of Section 12601's language applying to governmental agencies responsible for the administration of juvenile justice envisioned that it would encompass juvenile court systems, the entities responsible for adjudicating juveniles' guilt and determining their sentences.

II

THE YOUTH COURT JUDGES ARE NOT ABSOLUTELY IMMUNE FROM THIS ACTION

A. Standard Of Review

Whether a defendant possesses absolute immunity from suit is a question of law reviewed *de novo.* *Orellana* v. *Kyle*, 65 F.3d 29, 33 (5th Cir. 1995).

B. The Youth Court Judges Are Not Immune From This Suit Because The United States Seeks Only Declaratory And Equitable Relief, Not Damages

The district court also erred in concluding that the Youth Court judges are absolutely immune from this lawsuit. In *Pulliam* v. *Allen*, 466 U.S. 522 (1984), which involved a private suit seeking equitable relief against a state-court judge under 42 U.S.C. 1983, the Supreme Court held that absolute judicial immunity applies only to suits seeking damages, not to suits seeking only declaratory and injunctive relief against judges in their official capacity. *Id.* at 541-542.[11] The United States sought only declaratory and equitable relief in this case. Indeed, Section 12601 does not authorize the Department of Justice to seek damages. See

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[11] Twelve years after the Court decided *Pulliam*, Congress amended Section 1983 to state that, "in any action brought [under Section 1983] 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; see Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 309(c), 110 Stat. 3853. Congress has added no similar limitation to Section 12601.

34 U.S.C. 12601(b). Accordingly, the Youth Court judges do not enjoy absolute immunity from this action.

The district court acknowledged *Pulliam* but concluded that it does not apply here because the United States sought "much more than injunctive relief." ROA.1280. That is incorrect. All the relief the United States requested is declaratory or equitable in nature and aimed at the judges in their official, not personal, capacities. See ROA.64-65; p. 6, *supra* (listing the requested relief). *Pulliam* did not turn on the scope of the relief sought but on its equitable nature. That the relief requested here was broader in scope than that at issue in *Pulliam* does not change its fundamentally equitable character.

To the extent the district court's ruling was grounded in federalism concerns, *Pulliam* makes clear that such concerns are more properly addressed as a question of whether and to what extent equitable relief can be granted in any given case, not "by a doctrine of judicial immunity." 466 U.S. at 539. Thus, if the court believed that the relief the United States requested was too extensive or intrusive, the proper course would be to tailor the scope of any relief it grants as narrowly as necessary to avoid federalism concerns, not to dismiss the case altogether on immunity grounds. See *id.* at 542-543 & n.22; cf. *Ciudadanos Unidos de San Juan* v. *Hidalgo Cty. Grand Jury Comm'rs*, 622 F.2d 807, 827 (5th Cir. 1980), cert. denied 450 U.S. 964 (1981) (holding, in a class-action challenge to a state court's

allegedly discriminatory grand jury selection system, that "it is generally error in cases like these to order dismissal on the pleadings because the court could not from the outset define an appropriate remedy"). A district court exercising its equitable power is not beholden to the plaintiff's prayer for relief but has broad discretion to fashion a flexible remedy that balances the various interests at stake. See *Brown* v. *Plata*, 563 U.S. 493, 538 (2011); *Lemon* v. *Kurtzman*, 411 U.S. 192, 200-201 (1973) (plurality op.); *Ciudadanos*, 622 F.2d at 824-829; see also ROA.1463 (government counsel acknowledging that it is within the court's discretion to determine whether the relief requested "would be an appropriate remedy for the violation, if found").

In any event, the district court's characterization of the relief the United States sought in its complaint (see ROA.1280) is inaccurate and exaggerated. For example, the United States did not ask the district court to "dictate to the Youth Court" either when it must hold hearings or what procedures it must use. ROA.1280. To the contrary, the United States' request for relief explicitly asked the court to order the County and Youth Court judges *themselves* to "promulgate and effectuate policies" to come into compliance with the Constitution. ROA.65; see also ROA.1490 (government counsel stating that a United States victory "would require *the [Youth] [C]ourt* to change its practices to come into conformity with the United States Constitution" and emphasizing that "there is a wide, wide

variety of ways that a court can do that") (emphasis added). In other words, the injunction the United States sought would protect defendants' interest in determining for themselves how best to modify their policies and procedures to adequately protect juveniles' constitutional rights; the district court's role would be to assess whether the defendants' new policies do so, something that would not require intrusion into any particular juvenile proceeding.[12] This Court has recognized that an "effective way of formulating relief" to account for "the interests of state and local authorities in managing their own affairs" in systemic civil rights actions is "to order the [state and local officials] *themselves* to devise a plan to bring the operation of [their institution] within constitutional parameters." *Ciudadanos*, 622 F.2d at 828 (emphasis added).

Nor did the United States' prayer for relief ask the district court to "overturn or reverse state court judgments" or otherwise become "the direct appellate court for Youth Court proceedings." ROA.1280. Rather, with one limited exception, all the relief the United States requested was prospective and aimed at reforming

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[12] See also ROA.1404, 1406 (government counsel emphasizing that any remedy would "have to strike a balance between [the Youth Court's] interests and the interests of the United States" and "ensure that youth's rights are being protected without being unnecessarily intrusive"); ROA.1491 (government counsel observing that, should the United States prevail on the merits, the district court "would craft a remedy that * * * adequately protects the constitutional rights of * * * the youth that come before the court, but also gives the judges their due discretion to run their courtroom as they see fit").

Youth Court policies and procedures on a systemic level, not at correcting errors in any individual case.[13] See ROA.64-65 (requesting a judgment declaring that defendants' practices and policies as alleged violate the Constitution, an order permanently enjoining defendants from subjecting children to those unconstitutional policies and practices, an order requiring defendants to promulgate and effectuate policies to protect the constitutional rights of children coming before the Youth Court, and an order for equitable relief including the creation of alternatives to detention for juveniles). As government counsel explained below, the United States' concern was not whether "this individual child [was] properly convicted or Mirandized" but, rather, "the administration of juvenile justice in the County" more broadly. ROA.1462; see also ROA.1404 ("We don't want to be involved in the intricacies of the day-to-day running of the

[13] The only retrospective relief the United States requested was an order requiring defendants to "review and expunge[] youth records and provi[de] * * * supports for children who have been harmed by" defendants' unconstitutional practices. ROA.65. Government counsel explained below that the United States included expungement "as a potential remedy in the complaint" as a way to "make whole individuals who have been affected by" the systemic violations alleged, and that expungement has been a remedy employed in other civil rights cases. ROA.1421-1422. Counsel noted that a manageable "expungement program" would not require the court to review individual juvenile adjudications but could premise eligibility for expungement on more categorical criteria. ROA.1464-1465; see also ROA.1422. But counsel urged that, in any event, it would be the court's role during the remedial phase to determine whether expungement "were an appropriate remedy" and, if so, "what would be a reasonable way to structure it" ROA.1463; see also ROA.1422-1423. Counsel also emphasized that expungement was "not the primary remedy" the United States was seeking. ROA.1463.

Lauderdale County Youth Court"). Addressing the structural problems the United States alleged in its complaint would not require the district court to review the substance of any individual juvenile adjudication much less act as the "direct appellate court for Youth Court proceedings." ROA.1280.

In sum, absolute judicial immunity does not apply here because the United States sought only declaratory and equitable relief, and the district court can and should address any concerns about intruding on state-court functions by tailoring any equitable relief it grants, not by dismissing the case at the outset.

III

THIS COURT SHOULD REINSTATE THE CLAIMS AGAINST LAUDERDALE COUNTY

A. Standard Of Review

A district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) is reviewed *de novo*. *United States ex rel. Bias* v. *Tangipahoa Par. Sch. Bd.*, 816 F.3d 315, 321 (5th Cir. 2016). The reviewing court, like the district court, must accept the facts alleged as true, and "[d]ismissal is improper if the allegations support relief on any possible theory." *Ibid.* (citations omitted).

B. The District Court's Dismissal Of The United States' Claims Against Lauderdale County Was Premised On Its Erroneous Dismissal Of The Claims Against The Judges

The district court dismissed the claims against Lauderdale County on the ground that they were "inextricably intertwined" with the claims against the

judges. ROA.1267, 1282; see also ROA.470-471 (County's joinder in the judges' motion to dismiss). For the reasons explained above, the district court erred in dismissing the claims against the judges. Accordingly, if this Court reverses the district court's order dismissing the United States' claims against the Youth Court judges, it should also reinstate the claims against Lauderdale County.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order dismissing the United States' claims against Lauderdale County and the County's Youth Court judges in their official capacities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 20, 2018, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLANT with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Christine A. Monta
CHRISTINE A. MONTA
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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS APPELLANT:

(1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6,651 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2010, in 14-point Times New Roman font.

s/ Christine A. Monta
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Date: February 20, 2018