No. 22-40378

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Joe Blessett,

Plaintiff - Appellant

v.

Greg Abbott; Ken Paxton; Steven C. McCraw; Xavier Becerra; United States Department of Health and Human Services; Anthony Blinkin; United States Department of State; United States; City of Galveston; Sinkin Law Firm,

Defendants - Appellees

On Appeal from the United States District Court
for the Southern District of Texas, Galveston Division

No. 3:22-cv-9

BRIEF OF APPELLEES UNITED STATES DEPARTMENT OF STATE, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, SECRETARY XAVIER BECERRA, SECRETARY ANTONY BLINKIN, AND THE UNITED STATES

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CERTIFICATE OF INTERESTED PERSONS

(1) No. 22-40378, Joe Blessett v. Greg Abbott; Ken Paxton; Steven C. McCraw; Xavier Becerra; United States Department of Health and Human Services; Anthony Blinkin; United States Department of State; United States; City of Galveston; Sinkin Law Firm

(2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

a. **Plaintiff-Appellant**

Joe Blessett

b. **Defendants-Appellees**

Greg Abbott, and Ken Paxton, Steven C. McCraw, United States Department of State, United States Department of Health and Human Services, Secretary of Health and Human Services Xavier Becerra, Secretary of State Antony Blinkin, and the United States, City of Galveston, and Sinkin Law Firm

c. **Counsel for Defendants-Appellees United States Department of State, United States Department of Health and Human Services, Secretary of Health and Human Services Xavier Becerra, Secretary of State Antony Blinkin, and the United States**

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d. **Counsel for Defendants-Appellees Greg Abbott, and Ken Paxton, Steven C. McCraw**

Johnathan Stone

e. **Counsel for Defendant-Appellee City of Galveston**

Barry Conrad Willey

f. **Counsel for Defendant-Appellee Sinkin Law Firm**

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/s/Myra Siddiqui
Myra Siddiqui
Assistant United States Attorney

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Fed. R. App. P. 34(a)(1) and 5th Cir. R. 28.2.3, Appellees state that the Court can decide the issues presented on the briefs and the record.

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STATEMENT OF JURISDICTION

Appellees do not dispute that this Court has jurisdiction to decide this appeal.

STATEMENT OF THE ISSUES

Did the district court properly grant the Appellees' motion to dismiss?

STATEMENT OF THE CASE

This is the sixth federal case filed by Appellant Joe Blessett to challenge his child support obligations.[1] This Court has already decided that federal courts do not have jurisdiction to hear Appellant's objections to child support orders issued by Texas courts. *Blessett v. Texas Off. of Att'y Gen. Galveston Cty. Child Support Enf't Div.*, 756 F. App'x 445, 445-46 (5th Cir. 2019) (affirming dismissal of Plaintiff's previous child

[1] *See Blessett v. Texas Off. of Att'y Gen. Galveston Cty. Child Support Enf't Div.*, No. 20-40135, 2021 WL 4726598, at *2 (5th Cir. Oct. 8, 2021), cert. denied sub nom. *Blessett v. TX Off. of the Att'y Gen*, No. 21-999, 2022 WL 827884 (U.S. Mar. 21, 2022) (affirming dismissal of case against Office of the Attorney General of Texas based on Eleventh Amendment sovereign immunity); *Blessett v. Garcia*, 816 F. App'x 945, 947 (5th Cir.), cert. denied, 141 S. Ct. 622 (2020) (affirming dismissal of fraud claims against custodial parent); *Blessett v. Sinkin L. Firm*, No. 3:17-CV-370, 2018 WL 1932386, at *2 (S.D. Tex. Apr. 23, 2018) (dismissing case against attorneys who represented ex-wife during the child support enforcement proceedings); *Blessett v. Jacoby*, No. 3:18-CV-00153, 2018 WL 5014146, at *3 (S.D. Tex. Oct. 16, 2018) (dismissing for lack of jurisdiction); *Blessett et al v. Galveston Cty. Child Support Division et al*, No. 3:18-CV-00415, Dkt. 18 (S.D. Tex. Feb. 14, 2019) (parties stipulated to dismissal).

support claims as "barred under the *Rooker-Feldman* doctrine because they 'invit[ed] district court review and rejection' of the state divorce decree and child support judgments").

Appellant Joe Blessett filed his complaint on January 7, 2022 (ROA.13) and amended his complaint on February 22, 2022 (ROA.790) and again on March 31, 2022 (ROA.1055). He brings allegations against Appellees United States Department of State ("State Department"), United States Department of Health and Human Services ("HHS"), Secretary of Health and Human Services Xavier Becerra, Secretary of State Antony Blinken[2], and the United States (together, "Federal Appellees"). Appellant argues broadly that the very institution of child support is a constitutional violation and, more specifically, charges HHS Secretary Becerra with "incompetence in implementing measures to protect the U.S. Constitution in the application of Title IV-D service," which caused the deprivation of Appellant's rights. (ROA.1076) In addition, Appellant alleges that Secretary Blinken "did nothing to prevent" the alleged deprivation of Appellant's passport rights when the

[2] Secretary Blinken's name is misspelled in the pleadings and case caption as "Antony Blinkin." In this brief, the correct spelling is used.

State Department denied his passport as required by federal law. (ROA.1108)

The Federal Appellees moved to dismiss Appellant's complaint on April 14, 2022. (ROA.1182) Appellant responded on April 21, 2022 (ROA.1247), and briefing concluded with the Federal Appellees' reply on April 28, 2022 (ROA.1631). The district court granted the motion to dismiss, along with the motions to dismiss filed by the other Defendants-Appellees, on May 17, 2022. (ROA.1680)

SUMMARY OF THE ARGUMENT

This Court has already held in a prior case involving the same Plaintiff-Appellant that under the *Rooker-Feldman* doctrine, federal courts lack jurisdiction to overturn a child support order issued by a state court. In addition, Appellant has failed to establish that any of the Federal Appellants has waived sovereign immunity. Moreover, Congress has legislated that the Secretary of State and Secretary of HHS cannot be held liable for passport denials based on outstanding child support. For these reasons, this Court should affirm the district court's dismissal of this lawsuit.

ARGUMENT

I. Standard of Review

This Court reviews the grant of a motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) *de novo*. *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008) (12(b)(1) standard); *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, 9 F.4th 247, 253 (5th Cir. 2021) (12(b)(6) standard).

II. This Court has already decided that it lacks jurisdiction to hear Appellant's previous challenge to child support orders issued by a state court.

The child support orders that are the subject of this lawsuit were issued by a Galveston County court, which maintains continuing exclusive jurisdiction of child support orders under the Uniform Interstate Family Support Act of 2008, as enacted by Chapter 159 of the Texas Family Code. *See* Tex. Family Code Sec. 159.205(a) ("A tribunal of this state [of Texas] that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order. . . .").

This Court has held that the *Rooker-Feldman* doctrine applies to Appellant's previous child support claims and "dictates that federal district courts lack subject matter jurisdiction over lawsuits that

effectively seek to 'overturn' a state court ruling." *Blessett v. Texas Off. of Att'y Gen. Galveston Cty. Child Support Enf't Div.*, 756 F. App'x 445, 445 (5th Cir. 2019). This Court affirmed dismissal of Appellant's previous child support claims which "collaterally attack[ed] the state court divorce decree and judgments concerning paternity and child support," finding that such claims were "barred under the *Rooker-Feldman* doctrine because they 'invit[ed] district court review and rejection' of the state divorce decree and child support judgments." *Id.* at 445-56; *see also Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004), abrogated on other grounds by *Lexmark Int'l, Inc. v. Static Control Components*, Inc., 572 U.S. 118, 13 (2014) ("While rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts.").

Moreover, broad constitutional challenges to Title IV-D have been rejected by this Court. *See United States v. Love*, 431 F.3d 477, 483 (5th Cir. 2005) ("[N]o one has successfully challenged the imposition of the child support condition on constitutional grounds."); *Anderson v. Abbott*,

83 F. App'x 594, 595 (5th Cir. 2003) (affirming dismissal of suit alleging constitutional violations in connection with child support where plaintiff "ha[d] not alleged facts showing that the case officer's refusal was pursuant to an unconstitutional state policy implemented by the Attorney General"). Moreover, Title IV–D does not contain a "private remedy—either judicial or administrative—through which aggrieved persons can seek redress." *Blessing v. Freestone*, 520 U.S. 329, 348 (1997) (recipients of child support services under Title IV-D could not sue state officials for the state's failure to provide adequate services).

Because this case seeks impermissible review of state court orders and the Title IV-D program, dismissal is proper. Further, as explained below, the claims against the Appellants cannot be brought even in state court.

III. Sovereign immunity bars Appellant's claims.

The United States, its agencies, and the heads of its agencies cannot be sued unless sovereign immunity has been waived by statute. *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *United States v. Sherwood*, 312 U.S. 584, 586 (1941); *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). A waiver of sovereign immunity cannot be implied; it must be

unequivocally expressed. *Mitchell*, 445 U.S. at 538; *United States v. King*, 395 U.S. 1, 4 (1969).

A. Congress has legislated that the Secretary of State and Secretary of Health and Human Services cannot be held liable for passport denials based on outstanding child support.

The State Department denied Appellant's passport application as required by 22 C.F.R. § 51.60(a)(2), which states: "The Department *may not* issue a passport . . . in any case in which the Department determines or is informed by competent authority that [t]he applicant has been certified by the Secretary of Health and Human Services as notified by a state agency under 42 U.S.C. 652(k) to be in arrears of child support in an amount determined by statute." 42 U.S.C. 652(k)(2) in turn requires the Secretary of State, upon receipt of such certification, to "refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual."

Significantly, Congress legislated in the next paragraph that "[t]he Secretary [of HHS] and the Secretary of State ***shall not be liable*** to an individual for any action with respect to a certification by a State agency under this section." 42 U.S.C. 652(k)(3) (emphasis added). Appellant therefore cannot hold Secretary Becerra or Secretary Blinken liable for

any claims related to the passport denial. *See In re Walker*, 276 B.R. 568, 571 (Bankr. W.D. Tex. 2002) ("[P]rinciples of justiciability prevent this court from interfering with the Secretary of State's exercise of executive authority in placing the hold on the debtor's passport—or with the Secretary of Health and Human Services' exercise of authority in certifying the debtor's child support obligations to the Secretary of State in order to initiate that hold.").

Moreover, the relevant regulations contain no waiver of sovereign immunity following a denial of a passport application in cases like this. For these reasons, dismissal of all claims related to the Appellant's passport was proper.

B. None of the Federal Appellants have waived sovereign immunity.

Appellant has failed to cite any statute that waives the immunity of any of the Federal Appellants for the alleged causes of action. *See Alfonso v. United States*, 752 F.3d 622, 625 (5th Cir. 2014) ("Once a Rule 12(b)(1) motion is filed, the party asserting jurisdiction bears the burden of proof.") (quotations omitted). Neither Secretary Becerra nor Secretary Blinken can be sued under Section 1983 because they are federal actors. While 42 U.S.C. § 1983 entitles an injured person to money damages if a

state official violates his constitutional rights, "Congress did not create an analogous statute for federal officials." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1854 (2017). Moreover, 42 U.S.C. § 654(12) lists Title IV-D requirements for the states, not the federal government or its agencies and officers. *See* 42 U.S.C. § 619(5).

In addition, the Administrative Procedures Act ("APA") does not waive sovereign immunity for broad "programmatic challenges" such as Appellant's, because such challenges do not actually involve "agency action." In *Lujan*, the Supreme Court "announced a prohibition on programmatic challenges" which seek "wholesale improvement of an agency's programs by court decree, rather than through Congress or the agency itself where such changes are normally made." *Alabama-Coushatta Tribe of Tex. v. United States*, 757 F.3d 484, 490 (5th Cir. 2014) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990) and *Sierra Club v. Peterson*, 228 F.3d 559, 565 (5th Cir. 2000)).

This prohibition recognizes "institutional limits on courts which constrain [judicial] review to narrow and concrete actual controversies." *Sierra Club*, 228 F.3d at 566. As this Court indicated, courts thus "not only avoid encroaching on the other branches of government, but . . .

continue to respect the expert judgment of agencies specifically created to deal with complex and technical issues." *Id.*

In his complaint, Appellant sought "[i]njunctive relief stopping all Title IV-D program enforcement until the U.S. Congress can review and re-write legislation to correct the defects in this program" (ROA.1076), which is a textbook example of the judicial encroachment prohibited by *Lujan*. At least one federal circuit has specifically declined to question HHS's implementation of Title IV-D. *See Wehunt v. Ledbetter*, 875 F.2d 1558, 1568 (11th Cir. 1989) ("It is not the function of the judiciary to direct the Secretary [of Health and Human Services] in the fulfillment of his role as overseer of the IV–D program.").

Because he has not established that the Federal Appellants have waived sovereign immunity, this Court should affirm the dismissal of Appellant's suit.

CONCLUSION

For the foregoing reasons, Appellees United States Department of State, United States Department of Health and Human Services, Secretary of Health and Human Services Xavier Becerra, Secretary of State Antony Blinken, and the United States respectfully request that

the Court affirm the district court's dismissal of Appellant's claims against them in their entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 12, 2022, the foregoing was filed and served on Plaintiff-Appellant and counsel of record through the Court's CM/ECF system and transmitted to the Clerk of the Court.

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Assistant United States Attorney

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/s/ Myra Siddiqui
Myra Siddiqui
Assistant United States Attorney
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