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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Danny L. Miller-Kidd, )

No. CV-17-08019-PCT-SPL

9 Plaintiff, )

**ORDER**

10 vs. )

11 Doug Ducey, et al., )

12 Defendants. )  
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15 On February 13, 2017, pro se Plaintiff Danny L. Miller-Kidd filed an amended  
16 complaint against Elizabeth Moss, an Assistant Arizona Attorney General, Tracy  
17 Stevens, a case manager for the Arizona Department of Child Safety, and Arizona  
18 Governor Doug Ducey.<sup>1</sup> (Doc. 5.) Stevens and Moss have moved to dismiss the  
19 complaint pursuant to Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil  
20 Procedure. (Doc. 12.) After considering the parties' filings,<sup>2</sup> the Court finds that it lacks  
21 jurisdiction under *Rooker-Feldman* and will dismiss this action.

22 Miller alleges that on September 14, 2013, minor child K.M. and her siblings were  
23 removed by the State from their mother and were placed into foster care. (Doc. 5 ¶ 10.) A

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25 <sup>1</sup> Ducey was dismissed from this action on April 11, 2017. (Doc. 8.)

26 <sup>2</sup> Several of Miller's submissions in this case have been filed and/or signed by a  
27 non-lawyer proxy, inmate JD Merrick, who the parties have advised is Miller's brother.  
28 (See e.g., Docs. 33 & 34.) While the federal rules generally do not permit non-lawyers to  
represent parties in federal court, as a matter of discretion and judicial economy, the  
Court has considered the filings. Miller is forewarned however that further filings of this  
kind will be summarily stricken by the Court.

1 publication hearing was held on December 8, 2014 in the Mohave County Superior  
2 Court, at which time Judge Richard Weiss entered an order of default as to all putative  
3 fathers of K.M., thereby terminating their parental rights. (Doc. 5 ¶¶ 17, 26.) Miller  
4 alleges that in the weeks that followed, he was alerted by a relative of K.M. that he was  
5 possibly her biological father. (Doc. 5 ¶ 18.) Miller contacted Stevens and underwent  
6 DNA testing, the results of which confirmed on May 5, 2015 that he was K.M.'s father.  
7 (Doc. 5 ¶¶ 18 - 22.) Unbeknownst to Miller, however, K.M. and her siblings had been  
8 adopted the previous month. (Doc. 5 ¶ 24.) On August 24, 2015, Miller, through counsel,  
9 moved to intervene in the state court proceedings and to set aside the adoption of K.M.  
10 (Doc. 5 ¶ 26.) The state court denied the motion on October 15, 2015, reasoning: "There  
11 is no pending case to intervene in, as this case was dismissed as to K.M. on or about June  
12 8, 2015. This matter is not the adoption file and the father appears to have established  
13 paternity by genetic testing prior to the termination order. The father, although known to  
14 Department of Child Services, never participated in any court proceeding. He was  
15 defaulted as a John Doe father at a Publication Hearing held December 8, 2014." (Doc. 5  
16 ¶ 26.) Miller states that he pursued other avenues for relief in state court such as a "Writ  
17 of Habeas Corpus, Special Action, etc.," but "[i]n every instance the court refused to  
18 hear" him. (Doc. 5 ¶ 27.)

19 In his amended complaint, Miller brings three claims for relief under 42 U.S.C. §  
20 1983 and asks for nominal, compensatory, and punitive damages against each defendant  
21 and judgment of the Court: (1) declaring that Stevens and Moss violated his "parental and  
22 constitutional rights and protections under the United States Constitution"; (2) declaring  
23 that Arizona Revised Statute § "8-106.01 et seq. that the court relied [on] to terminate  
24 [Miller's] parental rights violated his First, Fourth, Fifth, and or Fourteenth Amendment  
25 rights under the United States Constitution"; (3) invalidating the adoption of K.M.;  
26 restoring Miller's "right to due process"; reinstating Miller's parental rights to K.M.; and  
27 remanding K.M. into the custody of Miller. (Doc. 5 ¶¶ 35-37.)

28 The *Rooker-Feldman* doctrine instructs that federal courts lack jurisdiction to hear

1 a direct appeal of a state court judgment<sup>3</sup> or any “‘de facto equivalent’ of such an  
2 appeal.” *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012) (quoting *Noel v. Hall*, 341  
3 F.3d 1148, 1155 (9th Cir. 2003)). A federal cause of action functions as a “forbidden de  
4 facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains  
5 of a legal wrong allegedly committed by the state court, and seeks relief from the  
6 judgment of that court.” *Cooper*, 704 F.3d at 777-78; *Noel*, 341 F.3d at 1163. *See also*  
7 *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) (the  
8 doctrine bars “cases brought by state-court losers complaining of injuries caused by state-  
9 court judgments rendered before the district court proceedings commenced and inviting  
10 district court review and rejection of those judgments.”). “Once a federal plaintiff seeks  
11 to bring a forbidden de facto appeal,... that federal plaintiff may not seek to litigate an  
12 issue that is ‘inextricably intertwined’ with the state court judicial decision from which  
13 the forbidden de facto appeal is brought.” *Noel*, 341 F.3d at 1158.

14 Here, each of Miller’s claims hinge on the allegation that the state court’s  
15 termination of his parental rights deprived him of his constitutional rights, and he asks  
16 that this Court invalidate the state court’s order of adoption on that basis. In other words,  
17 Miller challenges adverse state court orders and seeks relief from them in federal court,  
18 which is precisely the type of de facto appeal that *Rooker-Feldman* bars. *See Cooper*, 704  
19 F.3d at 777-78.

20 Miller’s claims against Steven and Moss arising from their acts or omissions in  
21 connection with the state court proceedings are inextricably intertwined with the de facto  
22 appeal of the state court’s rulings and final judgment. *See Noel*, 341 F.3d at 1158;  
23 *Bianchi v. Rylaarsdam*, 334 F.3d 895, 901 (9th Cir. 2003). Miller does not argue that  
24 either defendant caused him some independent injury. *Cf. Noel*, 341 F.3d at 1163. Rather,  
25 Miller complains of harm caused by the state court’s judgment. (*See Doc. 34 at 7* (“If not  
26 for their actions, the family court would not have defaulted Plaintiff or Plaintiff would

27 <sup>3</sup> The doctrine applies to both final judgments and “interlocutory state court  
28 decisions.” *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir.  
2001).

1 have been able to intervene for just cause before K.M.’s adoption.”); Doc. 5 ¶ 34 (“Moss  
2 and Stevens individually and or jointly caused the Plaintiff to lose any and all rights to his  
3 biological daughter, to include but not limited to custody and all rights guaranteed him  
4 and his biological daughter”).) Therefore, the claims against Steven and Moss for their  
5 actions are barred under *Rooker-Feldman*.

6 Miller’s alternative claim challenging the constitutionality of Arizona’s putative  
7 fathers registry provision, cited as “A.R.S. [§] 8-106.01 et seq.,” also is inextricably  
8 intertwined with his de facto appeal. Although the introduction in his pleading attempts to  
9 allude otherwise (*see* Doc. 5 ¶ 2), Miller does not bring a general constitutional attack on  
10 the validity of the state statute that is independent of the state court’s rulings and  
11 judgment. *Cf. Skinner v. Switzer*, 562 U.S. 521, 534 (2011). Rather, Miller challenges the  
12 constitutionality of the application of the statute by the state court in his case; indeed, his  
13 claim specifically requests that the Court declare the statute on which the state “court  
14 relied to terminate [his] parental rights” to be unconstitutional. (Doc. 5 ¶ 36; *see also e.g.*,  
15 Doc. 5 ¶ 30 (“The statute allows judges in the State of Arizona to strip away the  
16 Plaintiff’s rights as a father”).) It follows that the claim is inextricably intertwined  
17 because the relief requested would effectively reverse the state court judgment or void its  
18 ruling. *See Cooper*, 704 F.3d at 778-81; *Bianchi*, 334 F.3d at 898. (Doc. 33 at 9  
19 (“Plaintiff’s complaint asserts that if not for the unconstitutional actions of the defendants  
20 – and the unconstitutionality of the statute, ARS 8-106.01 et seq. – the court conducting  
21 adoption proceedings could not by law permit the adoption of Plaintiff’s daughter.”).)  
22 This claim is therefore also barred under *Rooker-Feldman*.

23 Lastly, Miller’s argument that his claims are not barred under *Rooker-Feldman*  
24 because he is not a “losing party” is unavailing. (Doc. 33 at 9.) By his own allegations,  
25 Miller was indisputably a party to the action as his parental rights were defaulted, and  
26 thus, he was directly bound by the state court judgment whether or not he was allowed to  
27 intervene in the case after it became final.

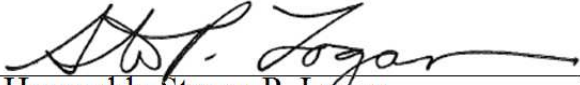
28 Accepting Miller’s allegations as true and drawing all reasonable inferences in his

1 favor, the Court finds that they are insufficient as a legal matter to invoke the Court's  
2 jurisdiction. *See Snyder & Associates Acquisitions LLC v. United States*, 859 F.3d 1152,  
3 1157 (9th Cir. 2017); *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014); *Kougasian*  
4 *v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004). The Court finds that the  
5 jurisdictional deficiency in the amended complaint cannot be cured by the addition of  
6 known or discoverable facts that are consistent with the present allegations. It therefore  
7 concludes that further development of the record is not warranted and will dismiss the  
8 amended complaint without leave to amend. *See U.S. v. Corinthian Colleges*, 655 F.3d  
9 984, 995 (9th Cir. 2011); *Ventress v. Japan Airlines*, 603 F.3d 676, 680 (9th Cir. 2010);  
10 *Lira v. Herrera*, 427 F.3d 1164, 1176 (9th Cir. 2005); *Lopez v. Smith*, 203 F.3d 1122,  
11 1130 (9th Cir. 2000). Accordingly,

12 **IT IS ORDERED:**

- 13 1. That the Motion to Strike (Doc. 37) is **denied**;
- 14 2. That the Motions to Dismiss (Docs. 27, 29) are **granted**;
- 15 3. That the amended complaint and this case are **dismissed**; and
- 16 4. That the Clerk of Court shall **terminate** this action and enter judgment  
17 accordingly.

18 Dated this 23rd day of March, 2018.

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20   
21 Honorable Steven P. Logan  
22 United States District Judge  
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