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March 25, 2020

Via CM/ECF

Hon. Deborah S. Hunt,
Clerk of Court,
United States Court of Appeals for the Sixth Circuit,
540 Potter Stewart U.S. Courthouse,
Cincinnati, Ohio 45202.

Re: Response to Notice of Correction in *Buck v. Gordon*,
No. 19-1959

Dear Ms. Hunt:

Amici Curiae-Appellants respond to the Notice of Correction (ECF No. 38) filed by Plaintiff-Appellee, in which it argues for the first time that the Dumonts cannot “reassert their prior Establishment Clause and Equal Protection Clause claims by filing a new legal action” and that “the *Dumont* case, and not the *Buck* case, is the proper forum for the Dumonts to raise claims regarding enforcement of their private contract with the State.”

Those arguments are not relevant to the only question presented by this appeal: whether the district court erred in denying the Dumonts’ motion to intervene pursuant to Federal Rule of Civil Procedure 24. Neither intervention as of right nor permissive intervention requires propounding claims, and the Dumonts do not seek here to enforce the terms of the settlement agreement entered in *Dumont v. Gordon*, No. 17-cv-13080 (E.D. Mich.). Instead, the Dumonts seek to protect their rights to foster and adopt from the Michigan child welfare system without discrimination and their settlement agreement. They seek to assert constitutional defenses—uniquely raised by them—to Plaintiff-Appellee’s claims. Because the Dumonts’ legal interest in intervention is not tied to any claims, claim preclusion is inapplicable.

Claim preclusion would also not bar new claims because the Dumonts face present and future injuries if Plaintiff-Appellee prevails. *See Cellar Door Prods., Inc. of Michigan v. Kay*, 897 F.2d 1375, 1378 (6th Cir. 1990) (“[C]auses of action that arose subsequent to the [prior voluntary dismissal with prejudice] are not barred by res judicata.”).¹ Moreover, the Dumonts’ defenses are not collaterally estopped because there was no “final judgment on the merits” in *Dumont*. *See NAACP, Detroit Branch v. Detroit Police Officer Assoc.*, 821 F.2d 328 (6th Cir. 1987).

In sum, Plaintiff-Appellee’s new arguments are red herrings. The Dumonts satisfy the requirements for intervention irrespective of whether they could have continued to litigate *Dumont* and irrespective of what happens in that case going forward.

¹ Moreover, *Dumont* was dismissed “pursuant to the terms of the Settlement Agreement.” *Dumont*, ECF No. 83, PageID.1469. If the State breaches those terms, the Dumonts can reopen and litigate to protect their constitutional rights.

Respectfully submitted,

/s/ Ann-Elizabeth Ostrager

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

This the 25th day of March, 2020.

/s/ Ann-Elizabeth Ostrager