UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of November, two thousand twenty-six.

PRESENT:

JOHN M. WALKER, JR.,
DENNIS JACOBS,
JOSEPH F. BIANCO,
Circuit Judges.

DONGKYU KIM,

Plaintiff-Appellant,

v. 25-3192-cv

STATE OF NEW JERSEY, BERGEN COUNTY SUPERIOR COURT, FAMILY PART, BERGEN COUNTY PROSECUTOR'S OFFICE, ANNY SCARDINO, DIRECTOR OF RISK MANAGEMENT, BERGEN COUNTY, ANTHONY SCARDINO, ASSISTANT PROFESSOR, FELICIAN UNIVERSITY, GORDON TOCCO, EMPLOYEE, INDIANA DEPARTMENT OF CHILD SERVICES, ELIZABETH TOCCO, ADMISSIONS ADVISOR, FELICIAN UNIVERSITY, TIM KOSTURKO, SVITLANA KOSTURKO, ANDREW

RITENOUR, NICK RITENOUR, DR. DANIEL HAKIMI, PA SHIRA WEIN, FELICIAN UNIVERSITY, INDIANA DEPARTMENT OF CHILD SERVICES, OB/GYN & INFERTILITY SERVICES OF NORTHERN NJ, LLC, MICHAEL TOCCO, HONORABLE JACLYN V. MEDINA, J.S.C., JOHN DOES 1-10, (UNKNOWN MEMBERS OF THE TRAFFICKING NETWORK),

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:	DONGKYU KIM, *pro se*, New York, New York.
FOR DEFENDANTS-APPELLEES DR. DANIEL HAKIMI, PA SHIRA WEIN, AND OB/GYN & INFERTILITY SERVICES OF NORTHERN NJ, LLC:	KAREN HAUSS, Vaslas Lepowsky & Hauss LLP, Staten Island, New York.
FOR DEFENDANTS-APPELLEES FELICIAN UNIVERSITY AND ANTHONY SCARDINO:	Jennifer Borek, Genova Burns LLC, Newark, New Jersey.
FOR DEFENDANTS-APPELLEES THE STATE OF NEW JERSEY, BERGEN COUNTY SUPERIOR COURT, FAMILY PART, BERGEN COUNTY PROSECUTOR'S OFFICE, ANNY SCARDINO, GORDON TOCCO, ELIZABETH TOCCO, TIM KOSTURKO, SVITLANA KOSTURKO, ANDREW RITENOUR, NICK RITENOUR, INDIANA DEPARTMENT OF CHILD SERVICES, MICHAEL TOCCO, AND JACLYN V. MEDINA:	No appearance.

Appeal from a judgment of the United States District Court for the Southern District of New York (Katherine P. Failla, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED** as modified.

Dongkyu Kim, proceeding *pro se*, appeals from the district court's judgment *sua sponte* dismissing his complaint.[1] Kim sued twenty-eight defendants, alleging that they conspired with non-party Alina Ogoltsova (the purported mother of his child) to send his child to another family. The complaint asserts claims "for violations of his civil rights under color of law, pursuant to 42 U.S.C. § 1983; civil remedies under the Trafficking Victims Protection Act (TVPA), 18 U.S.C. § 1595; the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964; and supplemental state law claims." *Kim v. New Jersey*, 25-cv-8315, Dkt. No. 1 (Compl.) at 2 (S.D.N.Y. Oct. 10, 2025). The district court *sua sponte* dismissed Kim's complaint for, among other things, lack of subject-matter jurisdiction and as frivolous. *See generally Kim v. New Jersey*, No. 25-cv-8315, 2025 WL 3013080 (S.D.N.Y. Oct. 28, 2025). The district court also denied Kim's motion for reconsideration. *See generally Kim v. New Jersey*, No. 25-cv-8315, 2025 WL 3560379 (S.D.N.Y. Dec. 11, 2025). We assume the parties' familiarity with the underlying facts, procedural history of the case, and issues on appeal, to which we refer only as necessary to explain our decision.[2]

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[1] Although the district court did not enter separate judgment, judgment is now deemed entered. *See* Fed. R. App. P. 4(a)(7)(A)(ii) (judgment deemed entered after 150 days); *see also id.* 4(a)(7)(B) (failure to enter separate judgment does not affect validity of appeal).

[2] We deny Kim's pending motions for discovery and to supplement the record on appeal. As to the exhibits that he already filed in the district court, his motions to supplement are unnecessary. *See* Fed. R. App. P. 10(a)(1) (record on appeal includes "the original papers and exhibits filed in the district court"). With respect to the new exhibits, Kim has not shown that supplementing the record on appeal is warranted. *See id.* 10(e)(2); *Loria v. Gorman*, 306 F.3d 1271, 1280 n.2 (2d Cir. 2002) ("Ordinarily, material not included in the record on appeal will not be considered.").

"[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee." *Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) (per curiam). We have not yet decided whether such dismissals are reviewed *de novo* or for abuse of discretion. *Id.* at 364 n.2. We need not decide that question here, however, because even under the less deferential *de novo* standard of review, the district court was correct that *sua sponte* dismissal of Kim's complaint was warranted. That is true even though Kim "has been *pro se* throughout, [meaning] his pleadings and other filings are interpreted to raise the strongest claims they suggest." *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024).

As a threshold matter, Kim's claims seeking review and rejection of the New Jersey state court judgment were barred by the *Rooker-Feldman* doctrine.[3] That doctrine, although unaddressed by the district court and the parties, "goes to subject matter jurisdiction," *Hunter v. McMahon*, 75 F.4th 62, 66 (2d Cir. 2023), *abrogated in part on other grounds by T.M. v. Univ. of Md. Med. Sys. Corp.*, 608 U.S. 668 (2026), and "we have an independent obligation to consider the presence or absence of subject matter jurisdiction *sua sponte*," *Joseph v. Leavitt*, 465 F.3d 87, 89 (2d Cir. 2006).

The *Rooker-Feldman* doctrine "bars a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court." *Hunter*, 75 F.4th at 67 (internal quotation marks and citation omitted). This Court has articulated a four-part test for applying *Rooker-Feldman*: (1) the federal-court plaintiff must have lost in state court; (2) the plaintiff must complain of injuries caused by a state court judgment;

[3] In September 2024, Kim sued Ogoltsova in New Jersey state court, raising allegations similar to those in this case, and the court dismissed that action with prejudice. *See Kim*, 2025 WL 3013080, at *1.

(3) the plaintiff must invite district court review and rejection of that judgment; and (4) the state court judgment must have been rendered before the district court proceedings commenced. *Id.* at 68.

Here, with respect to Kim's claims seeking review and rejection of the New Jersey judgment, all four elements were satisfied: (1) Kim's state court action was dismissed with prejudice; (2) he asserted that the state court violated his right to a fair hearing; (3) he asked the district court to declare the state dismissal unconstitutional and void; and (4) the dismissal occurred before Kim commenced this action. Although the record does not establish whether Kim appealed the state court judgment, the *Rooker-Feldman* doctrine nonetheless applies. *See T.M.*, 608 U.S. at 672 (clarifying that appealability of state court judgment or pending state court appeal does not bar the application of *Rooker-Feldman* to final state court judgments). However, "dismissals for lack of subject matter jurisdiction must be without prejudice, rather than with prejudice." *Green v. Dep't of Educ.*, 16 F.4th 1070, 1074 (2d Cir. 2021) (internal quotation marks and citation omitted). We therefore modify the judgment to reflect that the claims dismissed pursuant to *Rooker-Feldman* were dismissed without prejudice. *See United States v. Adams*, 955 F.3d 238, 250–51 (2d Cir. 2020) (recognizing our authority to modify and affirm judgments under 28 U.S.C. § 2106).[4]

[4] Also, with respect to subject matter jurisdiction, the district court correctly determined that the Eleventh Amendment barred a damages action against many of the named defendants, including the State of New Jersey, the Bergen County Superior Court, Family Part, the Indiana Department of Child Services, the Honorable Jaclyn V. Medina, J.S.C., and the Bergen County Prosecutor's Office. *See Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis*., 804 F.3d 178, 193 (2d Cir. 2015) ("The Eleventh Amendment bars a damages action in federal court against a state and its officials when acting in their official capacity unless the state has waived its sovereign immunity or Congress has abrogated it.").

As to Kim's remaining claims, the district court was correct that they were factually frivolous. A claim is "'factually frivolous' if the sufficiently well-pleaded facts are 'clearly baseless'—that is, if they are 'fanciful,' 'fantastic,' or 'delusional.'" *Gallop v. Cheney*, 642 F.3d 364, 368 (2d Cir. 2011) (quoting *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992)). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton*, 504 U.S. at 33.

Here, Kim alleged that the defendants "coerced Alina Ogoltsova into pregnancy" and then "faked [an] abortion . . . for financial/relational gain & an admission to Felician University after sabotaging" his prospective marriage to her, and that various state agencies and courts either refused to help Kim or were co-conspirators. *Kim*, 25-cv-8315, Dkt. No. 1 (Compl.) at 12. As the district court correctly determined, these assertions were baseless and rose to the "level of the irrational or the wholly incredible." *Denton*, 504 U.S. at 33. Accordingly, the district court did not err in *sua sponte* dismissing Kim's remaining claims on that ground. *See Fitzgerald*, 221 F.3d at 363.[5]

For the same reasons, the district court did not err in denying Kim leave to amend his complaint, or in denying reconsideration. When "a district court's denial of leave to amend . . . was based on an interpretation of law, such as futility, . . . we review the legal conclusion *de novo*." *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 119 (2d Cir. 2012). And "[w]e review the district court's ruling on a Rule 59(e) motion for abuse of discretion."

[5] Because we affirm dismissal on these grounds, we need not address the district court's alternative holding that the claims were barred by the doctrine of collateral estoppel.

Salamone v. Douglas Marine Corp., 111 F.4th 221, 233 (2d Cir. 2024) (internal quotation marks and citation omitted).

"A *pro se* complaint should not be dismissed without the [c]ourt granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation marks, brackets, and citation omitted). However, "a futile request to replead should be denied." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Here, given the factually frivolous nature of Kim's complaint, the district court was correct that leave to amend would have been futile.

Nor did the court abuse its discretion by denying Kim's Rule 59(e) motion. *See Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (explaining that the standard for granting reconsideration "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court").

* * *

We have considered Kim's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM AS MODIFIED ABOVE** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court