

No. 18-1068

**In The
Supreme Court of the United States**

RAJA MITTAL,

Petitioner,

vs.

COUNTY OF CLARK, *et al.*,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether the pro se Petitioner is entitled to a Writ of *Certiorari* when the dismissal of his federal claims for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine was unanimously affirmed by the Ninth Circuit in an unpublished opinion simply stating that the claims constitute a “de facto appeal” of a prior state court judgment.

TABLE OF CONTENTS

| | Page |
|---|------|
| QUESTION PRESENTED..... | i |
| OPINIONS BELOW..... | 1 |
| CONSTITUTIONAL PROVISIONS ALLEGEDLY INVOLVED | 1 |
| STATEMENT OF THE CASE..... | 1 |
| Factual Background and Allegations in the First Amended Complaint..... | 1 |
| Proceedings Below Dismissing the Federal Claims and Affirming on Appeal..... | 5 |
| REASONS FOR DENYING THE PETITION..... | 9 |
| CONCLUSION..... | 18 |

TABLE OF AUTHORITIES

| | Page |
|--|---------------|
| CASES | |
| <i>Cooper v. Ramos</i> , 704 F.3d 772 (9th Cir. 2012) | 14 |
| <i>District of Columbia Court of Appeals v. Feldman</i> , 460 U.S. 462, 103 S.Ct. 1303 (1983)..... <i>passim</i> | |
| <i>Exxon Mobil Corp. v. Saudi Basic Industries Corp.</i> , 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005)..... | 10, 15 |
| <i>Heck v. Humphrey</i> , 512 U.S. 477, 114 S.Ct. 2364 (1994)..... | 8 |
| <i>Henrichs v. Valley View Dev.</i> , 474 F.3d 609 (9th Cir. 2007) | 13 |
| <i>In re Sun Valley Foods Co.</i> , 801 F.2d 186 (6th Cir. 1986) | 15 |
| <i>Kougasian v. TMSL, Inc.</i> , 359 F.3d 1136 (9th Cir. 2004) | 10, 14 |
| <i>Lance v. Dennis</i> , 546 U.S. 459, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006)..... | 15 |
| <i>Noel v. Hall</i> , 341 F.3d 1148 (9th Cir. 2003) | 10 |
| <i>Pennzoil Co. v. Texaco, Inc.</i> , 481 U.S. 1, 107 S.Ct. 1519 (1987) | 7 |
| <i>Resolute Ins. Co. v. State of N.C.</i> , 397 F.2d 586 (4th Cir. 1968)..... | 15 |
| <i>Reusser v. Wachovia Bank, N.A.</i> , 525 F.3d 855 (9th Cir. 2008)..... | 14 |
| <i>Rooker v. Fidelity Trust Co.</i> , 263 U.S. 413, 44 S.Ct. 149 (1923) | <i>passim</i> |

TABLE OF AUTHORITIES – Continued

| | Page |
|--|--------|
| <i>Tal v. Hogan</i> , 453 F.3d 1244 (10th Cir. 2006)..... | 15 |
| <i>United States v. Throckmorton</i> , 98 U.S. 61, 8 Otto. 61, 25 L.Ed. 93 (1878) | 16, 17 |
| <i>Wood v. McEwan</i> , 644 F.2d 797 (9th Cir. 1981)..... | 16 |

RULES

| | |
|---|---|
| Federal Rule of Civil Procedure 8 | 7 |
|---|---|

STATUTES AND ORDINANCES

| | |
|---------------------------|------------|
| 42 U.S.C. § 1983 | 3, 7, 8 |
| 42 U.S.C. § 1985 | 3, 4, 7, 8 |
| 42 U.S.C. § 1986 | 4, 7, 8 |
| 42 U.S.C. § 5501 | 4 |
| 42 U.S.C. § 12395(b)..... | 4 |

TREATISE

| | |
|--|----|
| <i>Fraud</i> , Black's Law Dictionary (10th ed. 2014)..... | 16 |
|--|----|

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals issued on March 23, 2018 (docket No. 17-16081) is not reported in F.3d (716 Fed.Appx. 644 (Mem)). *See App. 2-5* to the Petition for Writ of *Certiorari*.

The opinion of the U.S. District Court of Nevada issued on March 30, 2017 (docket No. 2:15-cv-01037-KJD-VCF) dismissing the case is not reported in F.Supp.2d (Westlaw Citation: 2017 WL 1276054). *See App. 9-17* to the Petition for Writ of *Certiorari*.

CONSTITUTIONAL PROVISIONS ALLEGEDLY INVOLVED

The alleged pertinent claims for relief pertain to the Procedural and Substantive Due Process Clauses and the Equal Protection Clause of the Fourteenth Amendment. *See* U.S. Const. amend. XIV, § 1 (“nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”).

STATEMENT OF THE CASE

Factual Background and Allegations in the First Amended Complaint

Plaintiff/Petitioner (“Petitioner”) brought an action alleging various federal and state law claims

arising out of domestic matters in Family and/or Juvenile Court, and orders of those state courts relating to the custody and visitation of his son – X.X. [#48]. Petitioner alleges a conspiracy to deny him his familial rights and his freedom of association rights with his minor son after the minor was placed in protective custody from his contact on June 7, 2013 and when the Eighth Judicial District Court Family Division – Juvenile Court of Clark County, Nevada entered an order on June 15, 2013. The court order held that the minor shall remain in protective custody with his natural mother pending a disposition of the court because there was reasonable cause to believe that Petitioner was subjecting him to mental and emotional abuse. [#108 at 16-17].¹ Petitioner has alleged denial of due process as he alleges the notice of the hearing and the protective custody report provided to him without adequate notice. He further contends the resulting order as well as the subsequent procedural history of the family court case violated his due process and equal protection rights and resulted in improper rulings. He

¹ The actual court order issued on June 15, 2013 was made a part of the district court record. The Court stated it further finds “there is reasonable cause to believe that it would be contrary to the welfare of the child to remain at [Petitioner’s] home. Specifically, the Court finds that there are concerns of mental and or emotional abuse of the minor child by Raja Mittal in that he has subjected the child to multiple physical and forensic examinations regarding sexual abuse none of which have found reason to believe the minor child has been physically/sexually abused.” [#108 at 16]. The court further stated that the minor child has not been removed from his natural mother and that Petitioner’s visitation “with the minor child shall be supervised by the Department of Family Services.” [#108 at 17].

contends that this all occurred, at least in part, due to a conspiracy involving the state actor defendants and his own attorney to fabricate and suppress evidence during the state court proceeding. This case comes to this Court requesting appellate review as to the propriety of the U.S. Ninth Circuit Court of Appeals' unanimous decision affirmation of the United States District Court of Nevada's Order. The District Court granted Defendants' motion to dismiss based upon the application of the *Rooker-Feldman* doctrine and also for an overall failure to state plausible claims for relief under the various civil rights statutes.

On December 28, 2013, Petitioner, on behalf of himself, his son – X.X. ("X"), and as guardian ad litem, filed a prolix 72-page First Amended Complaint for Damages, Declaratory Relief and Injunctive Relief ("FAC") [#48 and 48-1]. Petitioner alleged fifteen (15) causes of action. Generally, Petitioner's claims arise out of domestic matters in Family and/or Juvenile Court, and orders of those courts relating to the custody and visitation of his son – X.X. ("X"). Petitioner does not have custody of X, but only visitation. Petitioner brings various mixed causes of action against the Clark County Respondents/Defendants as follows: (1) 42 U.S.C. § 1983 – First Amendment – Denial of Meaningful Access to Court; Fourth Amendment – Illegal Seizure of Child/Failure to Intercede; Fourteenth Amendment – Denial of Equal Protection and of Due Process – Denial of Family Rights and of Right to Bodily and Emotional Integrity; (2) 42 U.S.C. § 1985(2) – Conspiracy to Injure Rights of Party in State Court –

State Clause – Denial of Equal Protection and Denial of Family Rights and Companionship; (3) 42 U.S.C. § 1985(3) – Conspiracy to Deny Equal Protection and to Violate First Amendment – Free Speech Retaliation and Denial of Meaningful Access to Court; Fourth Amendment – Illegal Seizure of Child; Fourteenth Amendment – Denial of Due Process – Denial of Family Rights and of Right to Bodily and Emotional Integrity; (4) 42 U.S.C. § 1986 – Action for Neglect to Prevent Wrongs; (5) 42 U.S.C. § 12395(b) – Gender discrimination and racial discrimination; Juvenile Justice Act, 42 U.S.C. § 5501, et seq.; The Child Abuse Prevention and Treatment Act (CAPTA); (6) Monell violation; (7) Negligence per se; (8) Breach of Fiduciary Duty; (9) Legal Malpractice; (10) Familial Association/Right to Be Free From Dishonesty of Public Employees in Juvenile Court Proceedings, etc.; (11) Intentional Infliction of Emotional Distress; (12) Abuse of Process; (13) Failure to Discharge a Mandatory Duty Imposed by Enactment and State Created Danger; (14) Medical Malpractice; (15) Invasion of Privacy/Violation of HIPAA.

Contrary to Petitioner's assertions in his brief, his First Amended Complaint makes no direct claim that the Clark County Respondents violated his Fourth Amendment rights by making a warrantless entry onto his property to seize his minor child from his custody without exigent circumstances. In fact and as concluded by the district court, the First Amended Complaint stated that the mother had custody of the minor at all relevant times and he had only visitation rights. Petitioner does not ever allege that the minor

was in his direct custody at his home at the time he was placed in protective custody on June 7, 2013. Petitioner specifically alleges that he was informed about the minor being placed in protected custody on June 7, 2013 and that he was to appear in court on June 12, 2013 through a phone call. [#48 at 28].

Focusing his allegations on the process and results of the state court proceedings, Petitioner alleges that his due process rights were violated in every hearing before the family court because it was done by “ambush” and that he was given important information several times as he was stepping into the courtroom for hearings. [#48-1 at 10]. Petitioner stated that all Defendants conspired to take and keep his child from his care by “spreading lies, maliciously holding exculpatory evidence, and presenting fabricated evidence to the court, during the pendency of the juvenile dependency proceedings. . . .” [#48-1 at 11]. Petitioner baldly alleges the conspiratorial objective was to favor the minor’s mother and to violate his equal protection rights as “a male protective parent.” *Id.*

Proceedings Below Dismissing the Federal Claims and Affirming on Appeal

By Order [#123] filed on March 30, 2017, the Honorable Judge Kent J. Dawson of the United States District Court of Nevada granted the Clark County Defendants’/Respondents’ motion to dismiss. *App. 9.* The district court found based on the allegations in the pleadings that X.X. is Petitioner’s and Kristin Brown’s

minor son. *Id.* Also, Petitioner and Brown separated two years after the birth of X.X. and officially divorced in 2009. *Id.* As part of the divorce decree, Brown was granted primary physical custody of X.X. while Mittal was allowed visitation for two days a week. *Id.*

The court noted that Petitioner claimed that X.X. had always shown signs of physical and sexual abuse, but it was not until X.X. began to complain, that Petitioner was able to make the connection between these signs and their alleged cause. *App. 10.* In September of 2011, Petitioner alleged X.X. began to mention things to him that indicated he was being sexually abused by his maternal grandfather, Richard Brown. *Id.* Petitioner then reported his suspicions to the police and filed a petition with the family court to have his son removed from Brown's custody. *Id.* However, Petitioner's attempt to gain custody of X.X. was ultimately unsuccessful. *Id.*

In June of 2013, Defendant Teresa Tibbs informed Petitioner that Defendant Child Protective Services would be granting custody of X.X. to Brown, and not Petitioner. *Id.* Petitioner alleged a lengthy series of events that he believes caused Brown, rather than himself, to obtain custody of their son. *Id.* His theory is that Defendants, including his own attorney, conspired to influence and mislead the juvenile court into granting custody of X.X. to Brown by falsehoods and by withholding evidence from the court. *Id.* Petitioner asked the district court for a declaratory judgment invalidating the orders of the state court and granting him custody of X.X., and prayed for damages allegedly caused

by violations of 42 U.S.C. § 1983, § 1985, and § 1986; and other state law causes of action. *App.* 10-11.

The district court found that Petitioner's 72-page first amended complaint did not set forth a short and plain statement as required by Federal Rule of Civil Procedure 8. *App.* 12. The court stated it was apparent from the first amended complaint and Petitioner's briefs that he was challenging orders issued by state court judges relating to the custody of his son, particularly those based in a child dependency proceeding in juvenile court and initiated by CPS. *Id.* The district court correctly found a federal district court does not have jurisdiction to review errors in state court decisions in civil cases by citing *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415, 44 S.Ct. 149 (1923). The district court further correctly noted that if the federal claims are "inextricably intertwined" with a state court judgment, the federal court may not hear them citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 1533 (1987) (Marshall, J., concurring). *See App.* 13.

The district court found that, stripped to its essence, this action is one for federal court review of state court proceedings that amounts to nothing more than an attempt to litigate in federal court matters that were inextricably intertwined with state court decisions. *Id.* Accordingly, the Court properly dismissed Petitioner's federal claims for lack of subject matter jurisdiction under *Rooker-Feldman*. *App.* 14. The court also noted that the procedural history is

analogous to the one involved in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994), which this Court held bars § 1983 actions for unconstitutional convictions or imprisonment where the underlying sentence or conviction has not been reversed, expunged or declared invalid. *Id.* at n.2. Like *Heck*, Petitioner's damages claims challenge the legality and validity of the court's orders in the child dependency action. Petitioner indeed agreed to a *nolo contendere* settlement where he consented to a finding of educational neglect. *Id.*

The district court further found that even if it were to find that it had jurisdiction, it would still dismiss Petitioner's federal claims for failing to state a plausible claim for relief. First, the court found Petitioner in his § 1985 claims failed to assert anything more than a recitation of the elements and failed to provide the factual background to show that Defendants were motivated in their alleged misconduct by the fact that Plaintiff was male. *Id.* Second, the court concluded Petitioner failed to allege any specific facts that would make the race discrimination § 1983 claims plausible. The court found Petitioner had not claimed any connection between the Defendants' alleged misconduct and his own race or class; nor did he provide the factual allegation to show that a racial or class based motive is plausible. *App.* at 15. Third, the court found Petitioner's § 1986 claims were facially implausible given the dismissal of the allegations regarding race and sex discrimination. *App.* 16.

On appeal, the Ninth Circuit, on March 23, 2018, issued a brief, unanimous memorandum affirming the order dismissing the case. *App. 2*. The Ninth Circuit held that the district court properly dismissed Petitioner’s federal claims for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine “because the claims constitute a forbidden ‘de facto appeal’ of a prior state court judgment, or are ‘inextricably intertwined’ with that judgment.” *App. 3*.

REASONS FOR DENYING THE PETITION

Petitioner fails to establish any compelling reason warranting this Court’s discretionary review. Petitioner has abjectly failed to demonstrate that *certiorari* is warranted pursuant to Supreme Court Rule 10’s compelling standard. Indeed, Rule 10 states that “[a] petition for a writ of certiorari [will] rarely [be] granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” Sup. Ct. Rule 10. Yet those are precisely the errors asserted in the petition and thus Petitioner does not present an issue that falls within the category of cases this Court has deemed worthy of *certiorari*.

The appeal is clearly predicated upon an ordinary argument that the U.S. Court of Appeals just misapplied the well-settled *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine has evolved from the two Supreme Court cases from which its name is derived. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149,

68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). *Rooker-Feldman* prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment. The doctrine is generally confined to “cases brought by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005).

The Ninth Circuit correctly has stated the rule as follows:

If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction.

Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003). *Rooker-Feldman* thus applies when the federal plaintiff asserts as his injury legal error or errors by the state court and seeks as his remedy relief from the state court judgment. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

First, the orders from the U.S. District Court of Nevada and the affirming decision of the Ninth Circuit are certainly in line with this Court’s defining cases pertaining to the *Rooker-Feldman* doctrine. Petitioner’s random and prolix averments make clear that his principal grievance was being on the losing side in the Clark County family court case. The district court summarized Petitioner’s 72-page first amended complaint and correctly concluded that he is in essence seeking “federal court review of state proceedings.” *App.* 13. Petitioner’s first amended complaint makes this clear as Petitioner alleges the following:

- (1) Petitioner alleges “the system is intent on covering up sexual abuse and intimidating anyone who gets in their way” [#48 at 4];
- (2) Petitioner alleges certain defendants misrepresented facts in the dependency court to obtain the result of Petitioner living together with his minor son and the dependency court gave the minor’s mother everything that she asked for [#48 at 4, 28];
- (3) Petitioner alleges his attorney in the Juvenile proceedings was part of a conspiracy to hide evidence and to insure that he did not get custody of his son and caused Petitioner to enter into a fraudulent settlement [#48 at 11];

- (4) The Juvenile Court awarded custody to the minor's mother due to the presentation of false evidence at the hearing on June 12, 2013 [#48 at 15-16];
- (5) The Juvenile Court accepted the report submitted by certain Clark County Child Protective Services officers and relied upon it in coming to its decision [#48 at 18];
- (6) On November 20, 2013, the Juvenile Court continued to order that the minor stay in his mother's custody while relying upon perjured testimony [#48 at 19, 44];
- (7) Petitioner received notice of allegations against him when he was given a report just before he entered the court room on June 12, 2013 and he was prejudiced by trial by ambush in multiple court hearings [#48 at 28, 38];
- (8) On September 30, 2013, Petitioner's own attorney coerced him to settle the case and enter in a *nolo* plea for educational neglect [#48 at 35, 37];
- (9) Petitioner has gone back to family court multiple times to get custody back of his child without success due to improper evidence and the prior wrongly decided order of the dependency court [#48 at 39]; and
- (10) Petitioner was unable to obtain a favorable remedy when he timely filed a motion for change of custody based upon fraud

during the proceedings before the family court [#48-1 at 9].

Based at least in part on these allegations and pled as the principal remedy for nearly all of his claims for relief, Petitioner sought a declaratory judgment from the federal court that the family court's custody order placing his son in his mother's custody be declared void. [#48-1 at 12, 13, 16, 18, 21, 23, 24, 26, 27, 28, 31].

Accordingly, the Ninth Circuit Court of Appeals properly affirmed the order of the U.S. District Court of Nevada in a short and unpublished memorandum opinion “because the claims constitute a ‘de facto appeal’ of a prior state court judgment.” *App. 3.* Petitioner’s allegations made clear that the essence of his federal claims is to take exception with multiple orders of a state court including the one that maintains custody of his minor son with his mother. *See Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (*Rooker-Feldman* doctrine barred plaintiff’s claim because the relief sought “would require the district court to determine that the state court’s decision was wrong and thus void”). The orders of the district court and the appellate court correctly determined that Petitioner’s alleged legal injuries arose from the state court’s purportedly erroneous judgment and the relief sought specifically required the federal court to make this determination. *App. 3.* There is absolutely nothing about these rather simple determinations from the lower court worthy of *certiorari*.

Second, Petitioner's argument that his bald allegations of fraud during the state court proceedings make the *Rooker-Feldman* doctrine inapplicable obviously does not present a colorable basis to grant his petition. The case as well as the arguments framed by Petitioner do not implicate a compelling legal question to warrant the Court's review. Petitioner further rests his banal legal arguments on a factual basis that is utterly unsupported by the record below.

The Ninth Circuit does recognize that allegations of extrinsic fraud are not an error by the court, but rather it is an error committed by the party who engaged in the fraud. *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004). The Ninth Circuit's extrinsic fraud exception to the *Rooker-Feldman* doctrine is a narrow one as it only affects the jurisdictional bar if the adverse party is prevented from presenting his claims in state court. *Id.* at 1140-41 (holding *Rooker-Feldman* doctrine does not apply if extrinsic fraud prevented a party from presenting his claim in state court); *see also Cooper v. Ramos*, 704 F.3d 772, 782 (9th Cir. 2012) (concluding that plaintiff's claim for conspiracy in the state court proceeding was "inextricably intertwined" with the state court's decision); *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 858-60 (9th Cir. 2008) (defining a "de facto appeal" under the *Rooker-Feldman* doctrine, and explaining that the doctrine bars a claim of extrinsic fraud if the alleged fraud has been separately litigated in a state action to vacate the purportedly erroneous judgment).

It is true that there is not uniformity among the circuits as it pertains to the Ninth Circuit's extrinsic fraud exception to the *Rooker-Feldman* doctrine. This is, however, not an issue that has caused a wide split among the circuits. The Ninth Circuit also certainly is not a solo outlier on this issue either. *Compare Tal v. Hogan*, 453 F.3d 1244, 1256 (10th Cir. 2006) (concluding "new allegations of fraud might create grounds for appeal . . . [but] that appeal should be brought in the state courts."); *with In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986) ("A federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake."); *and Resolute Ins. Co. v. State of N.C.*, 397 F.2d 586, 589 (4th Cir. 1968) (same). The issue has just not been a significant source of disputation in the federal courts at all. Indeed, the scope of the *Rooker-Feldman* doctrine as a whole has not been a matter of much debate among the federal courts since the Court decided *Exxon Mobil*, *supra* in 2005 and *Lance v. Dennis*, 546 U.S. 459, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006) a year later.

Moreover, this case, to be sure, is not the proper case to serve as a vehicle to impose universal rule regarding an extrinsic fraud exception to the *Rooker-Feldman* doctrine because there is not a basis to suggest the state court's orders were obtained through extrinsic fraud in the first place. Petitioner did not allege any facts showing that any adverse party prevented him from presenting his claims and defenses in state court. Petitioner went to great lengths to allege

intrinsic fraud based upon numerous allegations of conspiracy, presentation of fabricated evidence and withholding exculpatory evidence. Petitioner does make clear that he was present in the state court proceedings and able to present his case. He alleges the state court did not find for him because the state actor defendants were deceptive during the proceedings.

Petitioner thus relies on allegations of intrinsic fraud which refers to fraud in a party's conduct during a prior litigation. It is deception that pertains to an issue involved in an original action. This includes fabricated evidence and perjured testimony. *Fraud*, Black's Law Dictionary (10th ed. 2014). Whereas, extrinsic fraud is deception practiced upon a party by his or her adversary, based on conduct or activities outside of the court proceedings themselves, which is designed to deprive the other party of the opportunity to present a claim or defense and which has that effect. *See id.*; *see also Wood v. McEwan*, 644 F.2d 797, 801 (9th Cir. 1981) ("Extrinsic fraud is conduct which prevents a party from presenting [his] claim in court.").

Under *United States v. Throckmorton*, 98 U.S. 61, 8 Otto. 61, 25 L.Ed. 93 (1878), this Court defined extrinsic fraud long ago as follows:

Where the unsuccessful party had been prevented from exhibiting full his case, by fraud or deception practised on him by his opponent, as by keeping him away from court, a false promise of compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by acts of the plaintiff, or

where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side – these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing.

Id. at 65-66.

Petitioner does not allege that the defendants kept him from knowing his rights with respect to the state court case, or that the defendants kept him from taking steps to assert his rights. What Petitioner alleges is that defendants lied about facts relevant to the custody of the minor. That alleged fraud is intrinsic because it pertains to an issue involved in the prior judicial proceeding. Therefore, this is not a proper case for the Court to use to clarify whether the federal courts possess jurisdiction to litigate allegations of extrinsic fraud as an exception to the *Rooker-Feldman* doctrine because there is not extrinsic fraud in this record at all.

In accordance with the foregoing, the Petition does not establish any compelling reason to justify the expenditure of this Court's time and resources to render another decision on this banal case. Petitioner plainly has not proven that *certiorari* is warranted pursuant to Rule 10's compelling standard. The petition is really predicated upon nothing more than a bald allegation

that the district court and the Ninth Circuit incorrectly determined that the federal case essentially was a de facto appeal of a state court domestic relations matter. Petitioner has not demonstrated the courts below made any errors at all, let alone shown the presence of any error worthy of granting the Petition.

CONCLUSION

The Petition for Writ of *Certiorari* should be denied. Petitioners have failed to demonstrate that there are compelling reasons warranting this Honorable Court to accept appellate jurisdiction of this case.

Respectfully submitted,

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