NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY GARMONG, Plaintiff-Appellant, v. NEVADA SUPREME COURT; et al., Defendants-Appellees.	No. 17-15715 D.C. No. 2:16-cv-00718-APG-VCF MEMORANDUM* (Filed Feb. 23, 2018)

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Gregory Garmong appeals from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims arising from state court proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Garmong's request for oral argument, set forth in the reply brief, is denied.

under the *Rooker-Feldman* doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We affirm.

The district court properly dismissed Garmong's action as barred by the *Rooker-Feldman* doctrine because Garmong's action is a "de facto appeal" of prior state court judgments, and raises claims that are "inextricably intertwined" with those judgments. *See Cooper v. Ramos*, 704 F.3d 772, 782 (9th Cir. 2012) (*Rooker-Feldman* doctrine barred claim that was "inextricably intertwined" with the state court's decision); *Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (*Rooker-Feldman* doctrine barred plaintiff's claim because alleged legal injuries arose from the "state court's purportedly erroneous judgment" and the relief sought "would require the district court to determine that the state court's decision was wrong and thus void").

AFFIRMED.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

GREGORY GARMONG,

Plaintiff,

v.

THE STATE OF NEVADA, ex rel. THE NEVADA SUPREME COURT; JUSTICE JAMES W. HARDESTY, in his official and individual capacities; JUSTICE MARK GIBBONS, in his official and individual capacities; JUSTICE MICHAEL DOUGLAS, in his official and individual capacities; JUSTICE NANCY M. SAITTA, in her official and individual capacities; and JUSTICE RON D. PARRAGUIRRE, in his official and individual capacities,

Defendants.

Case No. 2:16-cv-00718-APG-CWH

ORDER GRANTING MOTION TO DISMISS

(ECF No. 28)

(Filed Mar. 15, 2017)

Plaintiff Gregory Garmong brings federal and state law claims against the State of Nevada and the individual justices of the Supreme Court of Nevada arising from the Court's handling of appeals from state court decisions involving Garmong. The defendants move to dismiss the complaint, contending that each of Garmong's theories is a "de facto appeal" of the Nevada

Supreme Court's decisions, which lower federal courts may not entertain. I agree.

Lower federal courts may not review state court decisions—Congress limited such review to the United States Supreme Court. *See Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals, et al. v. Feldman*, 460 U.S. 462 (1983). This so-called *Rooker-Feldman* doctrine bars district courts from exercising jurisdiction "not only over an action explicitly styled as a direct appeal, but also over the 'de facto equivalent' of such an appeal." *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). "Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." *Id.* at 779 (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring)). Phrased another way, district court review is barred if "adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules. . . ." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). Nor may a litigant "attempt to circumvent the effect of *Rooker-Feldman* and seek a reversal of a state court judgment simply by casting the complaint in the form of a civil rights action." *Holt v. Lake Cty. Bd. of Comm'rs*, 408 F.3d 335, 336 (7th Cir. 2005).

Garmong alleges that the Supreme Court of Nevada and the individual defendant Justices have "failed to consider basic issues of jurisdiction, have failed to consider their own precedent and other Nevada law, have

failed to apply the law equally to various litigants as the Fourteenth Amendment and the Constitution of the State of Nevada require, and have failed to offer any reasoned basis for their various decisions." ECF No. 1 at 1. These allegations concern that Court's handling of his legal claims. For me to find in Garmong's favor, I would need to evaluate the adequacy of the Supreme Court of Nevada's application of state procedural and substantive law. This is the heart of what *Rooker-Feldman* bars.[1] Thus, I am barred from considering Garmong's claims, and I must dismiss his complaint.

"[L]eave to amend should be granted if it appears at all possible that the plaintiff can correct the defect," particularly if the plaintiff has not already been given a chance to amend. *Balisteria v. Pacifica Police Dept.*, 901 F.2d 696, 701 (9th Cir. 1990). That said, "futile amendments should not be permitted." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 188 (9th Cir. 1987) (quotations omitted). Because Garmong's grievances with the Supreme Court of Nevada arise entirely from its treatment of his cases, he cannot cast his complaint in such a way as to avoid application of the *Rooker-Feldman* doctrine. I therefore deny him leave to amend.

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[1] This case is nearly identical to an unreported Ninth Circuit decision. *See Cook v. Colorado Appeals Court*, 213 F. App'x 616, 617–18 (9th Cir. 2006) ("We reject Cook's contention that defendants' alleged commission of civil rights violations during his divorce proceeding takes his complaint out of the *Rooker-Feldman* ambit because that argument still rests on a claim of legal wrong by the state courts.").

IT IS THEREFORE ORDERED that the defendants' motion to dismiss **(ECF No. 28) is GRANTED**. The clerk of court shall enter judgment in favor of the defendants and against the plaintiff.

DATED this 15th day of March, 2017.

/s/ Andrew P. Gordon
ANDREW P. GORDON
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GREGORY GARMONG, Plaintiff-Appellant, v. NEVADA SUPREME COURT; et al., Defendants-Appellees.	No. 17-15715 D.C. No. 2:16-cv-00718-APG-VCF District of Nevada, Las Vegas ORDER (Filed May 9, 2018)

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Garmong's motion to recall the mandate (Docket Entry No. 33) is denied as unnecessary.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Garmong's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 32) are denied.

No further filings will be entertained in this closed case.

App. 8

(Filed Aug. 18, 2017)

Docket No. 17-15715

In the
United States Court of Appeals
for the Ninth Circuit

GREGORY GARMONG,
Plaintiff and Appellant,

vs.

THE STATE OF NEVADA, ex rel.
THE NEVADA SUPREME COURT,
JUSTICE JAMES W. HARDESTY, in
his official & individual capacity, *et al.*
Defendants and Appellees.

Appeal from a Judgment of the United States
District Court for the District of Nevada,
No. 2:16-cv-00718-APG-VCF,
The Honorable Andrew P. Gordon, Presiding

BRIEF OF APPELLANT

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[1] JURISDICTIONAL STATEMENT

Garmong's complaint stated a claim for relief arising under a federal statute, 42 U.S.C. § 1983, Excerpts of Record ("ER") at 23, and thus the federal district court had jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

This Court has jurisdiction of this appeal because the federal court's judgment of dismissal is final as to all claims and parties. 28 U.S.C. § 1291.

The final judgment was filed on March 15, 2017. ER at 4. The Notice of Appeal was filed on April 12, 2017. ER at 1.

STATEMENT OF ISSUE PRESENTED

1) Did the district court correctly dismiss the complaint on the single ground that it lacked subject matter jurisdiction to hear the action under the *Rooker-Feldman* doctrine, when the relief requested in the complaint would have absolutely no effect on the prior state court judgments?

STATEMENT OF THE CASE

Plaintiff and appellant Gregory Garmong ("Garmong") is a 73-year old retiree living in Smith, Nevada. Garmong was a party in five lawsuits in Nevada state court involving various claims and counterclaims for money damages and [2] other relief. Each of these lawsuits led to Garmong appealing trial court orders or judgments before the Nevada Supreme Court. The

Nevada Supreme Court issued orders resolving these appeals beginning in October 2013 and concluding in March 2016. The complaint alleges that these orders refused to address essential issues (including absence of subject matter and *in rem* jurisdiction), arguments, and precedents raised by Garmong's briefs, in violation of Garmong's constitutional rights of due process and equal protection of the laws, under both the federal and Nevada constitutions:

> 1) *Garmong v. Silverman*, Nevada Supreme Court Case No. 59275 (ER at 26-27, ¶ 25);
>
> 2) *Garmong v. Rogney* ("*Rogney I*"), Nevada Supreme Court Case No. 60517 (ER at 28-29, ¶ 30);
>
> 3) *Garmong v. Silverman*, ("*Silverman II*"), Nevada Supreme Court Case No. 63404 and No. 63820, consolidated (ER at 29-30, ¶ 35);
>
> 4) *Garmong v. Wespac*, Nevada Supreme Court Case No. 65899 (ER at 31-32, ¶ 40); and
>
> 5) *Garmong v. Rogney* ("*Rogney II*"), Nevada Supreme Court Case No. 68255 (ER at 32-33, ¶ 44).

[3] Garmong filed an action in the U.S. District Court for Nevada in March 2016 based on 42 U.S.C. § 1983 and Article I § 8(5) of the Constitution of the State of Nevada. The suit was filed against the following defendants: the State of Nevada, ex rel. The Nevada Supreme Court; Justice James W. Hardesty,

Justice Katrina Pickering, Justice Mark Gibbons, Justice Michael A. Cherry, Justice Michael Douglas, Justice Nancy M. Saitta, and Justice Ron D. Paraguirre, with all individuals sued in both their official and individual capacities (collectively as to the justices, "the defendant justices," and as to all defendants, "Defendants"). ER at 23-24.

The wrongful actions alleged were the defendant justices' refusal to address issues raised by Garmong's appellate briefs in the five cases listed above, summarized in the first paragraph of the complaint as follows:

> In deciding these matters, the Nevada Supreme Court, and its justices, have failed to consider basic issues of jurisdiction, have failed to consider their own precedent and other Nevada law, have failed to apply the law equally to various litigants as the Fourteenth Amendment and the Constitution of the State of Nevada require, and have failed to offer any reasoned basis for their various decisions. All of these actions are violations of the Fourteenth Amendment, and of The Constitution of the State of Nevada, and have deprived Plaintiff of his right to due process and equal protection.

ER at 24, ¶ 1.

[4] The complaint also alleged causes of action under Nevada law for conversion, intentional infliction of emotional distress, negligent infliction of emotional distress, and violation of the Nevada state constitution's guarantees against deprivation of life, liberty or

property, without due process of law, in Article I § 8(5). ER at 35-37.

In its prayer for relief, the complaint sought the following:

> (a) a declaration that the justices "violated Plaintiff's due process and equal protection rights under the Fourteenth Amendment," ER at 37, ¶79;
>
> (b) "a preliminary and permanent injunction prohibiting Defendants from violating Plaintiff's Constitutional rights under the Fourteenth Amendment and under Article 1 § 8(5) of The Constitution of the State of Nevada in any pending or future cases," ER at 37, ¶80;
>
> (c) an "award of monetary damages, compensatory and punitive . . . together with prejudgment interest in an amount to be calculated," ER at 38, ¶81;
>
> (d) an "award of reasonable attorney fees and costs, together with prejudgment interest in an amount to be calculated, *ibid.*, ¶82; and
>
> (e) "[a]ny further relief this Court deems appropriate," *ibid.*, ¶83.

On July 15, 2016, Defendants filed a motion to dismiss the complaint with prejudice pursuant to Fed. R. Civ. P 12(b)(1), 12(b)(5), and 12(b)(6). ER 44. Garmong filed his Response to the motion on September 9, 2016.

ER 45. Defendants filed their reply memorandum on September 30, 2016. ER 45.

[5] Without a hearing, the district court granted Defendants' motion to dismiss the complaint, without leave to amend, by order entered on March 15, 2017. ER 5-7. The sole basis of the district court's order of dismissal was that the complaint would require the district court to violate the *Rooker-Feldman* doctrine, based on the decisions of the U.S. Supreme Court in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) ("*Rooker*"), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983) ("*Feldman*"), which prohibits both actual and "de facto" appeals of state court judgments to federal district courts. Final judgment was entered on March 15, 2017. ER 5-7.

Garmong filed his Notice of Appeal on April 12, 2017. ER 1.

INTRODUCTION & SUMMARY OF ARGUMENT

Garmong respectfully submits this brief to appeal the judgment of the federal district court dismissing his complaint against the the Defendants under Federal Rule of Civil Procedure 12(b)(1) and (6).

To support their motion to dismiss the complaint, the Defendants primarily relied on the argument that the federal district court lacked subject matter jurisdiction to hear the complaint "because this case is inextricably intertwined with the issues the Nevada

Supreme Court decided and implicitly seeks to reverse the judgments rendered in Plaintiff's state court proceedings." ER at 16:20-22. [6] Defendants alleged that this was in violation of the *Rooker-Feldman* doctrine. ER at 16.

The district court granted Defendants' motion solely on the ground that it lacked subject matter jurisdiction to hear the action because to do so would require it to "evaluate the adequacy of the Supreme Court of Nevada's application of state procedural and substantive law," and that such determinations are "the heart of what *Rooker-Feldman* bars." ER at 6:16. The district court in footnote one cited a "nearly identical" Ninth Circuit opinion, *Cook v. Colorado Appeals Court*, 213 Fed. Appx. 616 (9th Cir. 2006) ("*Cook*"), which held that "the district court was required to refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court," *id.* at 617.

This ruling of the federal district court was in error. Leading cases of this Circuit make it clear that a correct application of the *Rooker-Feldman* doctrine requires a two-step process, the first step of which is to examine the complaint to determine whether it is a "de facto" appeal, meaning that it 1) is "asserting as legal wrongs the allegedly erroneous legal rulings of the state court," and 2) "seeks to vacate or set aside the judgment of that court." *See*, *Noel v. Hall*, 341 F.3d 1148, 1156 (9th Cir. 2003) ("*Noel*"), summarizing the holding of *Rooker*. *See also*, *Bell v. City of Boise*, 709

F.3d 890, 897 (9th Cir. 2013) ("*Bell*"). (*See* discussion in part I.A, below.)

[7] But all relief sought by the complaint in the current action would leave the judgments in the relevant state court judgments completely unaffected and completely enforceable. Therefore, the complaint is not a de facto appeal under the *Rooker-Feldman* doctrine in the first place, and the *Rooker-Feldman* inquiry should have ended with that negative determination. *See*, *Bell*, *supra*, 709 F.3d at 897. (*See* discussion in part I.B, below.)

The federal district court's dismissal of Garmong's complaint on the ground of the *Rooker-Feldman* doctrine was contrary to leading U.S. Supreme Court and Ninth Circuit precedent, and is thus reversible error. Appellant Gregory Garmong respectfully requests that this Court reverse the order of dismissal and remand this matter to the federal district court for further proceedings after Defendants file their responsive pleading.

[8] **ARGUMENT**

I.

THE DISTRICT COURT INCORRECTLY DISMISSED THE COMPLAINT ON THE GROUND THAT IT VIOLATED THE *ROOKER-FELDMAN* DOCTRINE; IN FACT, THE UNDERLYING STATE COURT JUDGMENTS WOULD BE ENTIRELY UNAFFECTED BY THE RELIEF REQUESTED IN THE COMPLAINT, AND *ROOKER-FELDMAN*, THEREFORE, IS INAPPLICABLE

The district court relied upon a single ground for its dismissal of the complaint pursuant to Rule 12(b), the doctrine preventing lower federal courts from hearing either a direct or a "de facto" appeal from a state court judgment, known as the *Rooker-Feldman* doctrine:

> The defendants move to dismiss the complaint contending that each of Garmong's theories is a "de facto appeal" of Nevada Supreme Court decisions, which lower federal courts may not entertain. I agree.

ER at 5:17-19. In a more detailed statement, the district court explained its reasoning as follows:

> Garmong alleges that the Supreme Court of Nevada and the individual defendant Justices have "failed to consider basic issues of jurisdiction, have failed to consider their own precedent and other Nevada law, have failed to apply the law equally to various litigants as the Fourteenth Amendment and the Constitution of the State of Nevada require, and have

> failed to offer any reasoned basis for their various decisions." ECF No. 1 at 1. These allegations concern that Court's handling of his legal claims. For me to find [9] in Garmong's favor, I would need to evaluate the adequacy of the Supreme Court of Nevada's application of state procedural and substantive law. This is the heart of what the *Rooker-Feldman* doctrine bars. [footnote 1] Thus, I am barred from considering Garmong's claims, and I must dismiss his complaint.

ER at 6:9-17.

In a footnote at the end of the next-to-last sentence above, the district court also discussed a decision of the Ninth Circuit based on the *Rooker-Feldman* doctrine:

> This case is nearly identical to an unreported Ninth Circuit decision. *See Cook v. Colorado Appeals Court*, 213 [Fed.]Appx. 616, 617-618 (9th Cir. 2006) ("We reject Cook's contention that defendants' alleged commission of civil rights violations during his divorce proceedings takes his complaint out of the *Rooker-Feldman* ambit because that argument still rests on a claim of legal wrong by the state courts.")

ER at 6, footnote 1.

Cook v. Colorado involved a husband in a divorce action claiming that "various individuals and entities" involved in his divorce in state court, including the judges, had violated his constitutional rights. The district court dismissed [10] the complaint under the

Rooker-Feldman doctrine. The Ninth Circuit panel affirmed, expressly stating its legal analysis based on *Rooker-Feldman*:

> The district court properly determined that Cook's action against the judicial defendants is barred by the *Rooker-Feldman* doctrine because his complaint essentially challenges the propriety of the state court judgment. *See Noel*, [*supra*,] 341 F.3d at 1158 (referring to *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 [. . .] (1923) and *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 [. . .] (1983)). Thus, the district court was required to "refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court." *Id.*

Cook, *supra*, 213 Fed.Appx. at 617.

As discussed below, Garmong respectfully submits that the analysis of the *Rooker-Feldman* doctrine used by the district court in the current appeal, following the analysis in *Cook v. Colorado*, is an inaccurate understanding and application of the *Rooker-Feldman* doctrine, and should be reversed.

A district court's jurisdictional dismissal under the *Rooker-Feldman* doctrine is reviewed de novo. *Noel*, *supra*, 341 F.3d at 1154.

[11] **A. The Correct Two-Step Application Of The *Rooker-Feldman* Doctrine**

In 2005, the U.S. Supreme Court held that the *Rooker-Feldman* doctrine is closely limited in its application to cases very similar to the two cases the doctrine is named after:

> The *Rooker–Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced *and inviting district court review and rejection of those judgments*.

Exxon Mobile Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005) ("*Exxon*") (emphasis added.) *See also*, *Lance v. Dennis*, 546 U.S. 459, 464 (2006) ("Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the . . . rule.")

In a 2011 opinion, the U.S. Supreme Court again emphasized that *Rooker-Feldman* should be applied *only in the narrow circumstances* present in the two cases after which the doctrine is named:

> We observed in *Exxon* that the *Rooker-Feldman* doctrine had been construed by some federal courts "to extend far beyond the contours of the *Rooker* and *Feldman* cases." *Id.* at 283. Emphasizing "the narrow ground" occupied by the doctrine, *id.* at 284, we

> clarified in *Exxon* that *Rooker-Feldman* "is confined to cases of the kind from which the doctrine acquired its name: [12] cases brought by state-court losers . . . inviting district court *review and rejection* of [the state court's] judgments." *Ibid.*

Skinner v. Switzer, 562 U.S. 521, 532 (2011) (emphasis added). Thus, it is clear that the *Rooker-Feldman* doctrine is only applicable to cases filed in federal district court that seek "review and rejection" of the state court judgment.

In accord with this instruction from the U.S. Supreme Court, leading decisions of the Ninth Circuit have recognized that the correct application of the *Rooker-Feldman* doctrine involves a two-step process. A court must first decide whether an action filed in federal district court is a "de facto appeal" of a state court judgment. A de facto appeal is one that 1) is "asserting as legal wrongs the allegedly erroneous legal rulings of the state court," and 2) "seeks to vacate or set aside the judgment of that court." *Noel, supra*, 341 F.3d at 1156, summarizing the holding of *Rooker*. In other sections of the opinion, *Noel* states that a de facto appeal "seeks relief from a state court judgment," (*id.* at 1164), or seeks to "set aside a state judgment," (*ibid.*). This is consistent with the Supreme Court's statements in *Exxon* and *Skinner* that the *Rooker-Feldman* doctrine applies only to cases where the federal court action seeks "review and rejection" of the state court judgment. (*See* quotations from *Exxon* and *Skinner* immediately above.)

Only if a court determines that the federal court action meets these specific tests of a de facto appeal should it then continue on to the second part of the [13] *Rooker-Feldman* analysis, analyzing whether there are additional issues that are "inextricably intertwined" with the de facto appeal:

> A federal district court dealing with a suit that is, in part, a forbidden de facto appeal from a judicial decision of a state court must refuse to hear the forbidden appeal. As part of that refusal, it must also refuse to decide any issue raised in the suit that is "inextricably intertwined" with an issue resolved by the state court in its judicial decision. [¶] The premise for the operation of the "inextricably intertwined" test in *Feldman* is that the federal plaintiff is seeking to bring a forbidden de facto appeal. The federal suit is not a forbidden de facto appeal because it is "inextricably intertwined" with something. Rather, it is simply a forbidden de facto appeal. *Only when there is already a forbidden de facto appeal in federal court does the "inextricably intertwined" test come into play.*

Noel, *supra*, 341 F.3d at 1158 (emphasis added).

This correct understanding of the two analytical steps in the *Rooker-Feldman* doctrine was strongly affirmed by another decision of this Court in 2013:

> The "inextricably intertwined" language from *Feldman* is not a test to determine whether a claim is a de facto appeal, but is rather a second and distinct step in the *Rooker-Feldman*

> analysis. *See id. Should the action not contain a forbidden de facto appeal, the Rooker-Feldman inquiry ends. See Manufactured Home Cmtys., Inc. v. City of San Jose*, 420 F.3d 1022, 1030 (9th Cir. 2005)

Bell, supra, 709 F.3d at 897 (emphasis added).

[14] Another Ninth Circuit case emphasized that determining whether a federal district court complaint is a forbidden de facto appeal requires a close examination of the *specific relief sought in the complaint*, and whether it "seeks relief" from the state court judgment amounting to "rejection" of that judgment:

> To determine whether an action functions as a de facto appeal, we "pay close attention to the *relief* sought by the federal-court plaintiff." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (internal quotation marks and citation omitted.) "It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court." *Noel, [supra]*, 341 F.3d at 1163; *see also, Skinner v. Switzer*, [562 U.S. 521, 532] (2011) (emphasizing that the *Rooker-Feldman* doctrine is limited to cases "brought by state-court losers . . . inviting district court review and rejection of the state court's judgments") (internal quotation marks, alteration, and citation omitted.)

Cooper v. Ramos, 704 F.3d 772, 777-778 (9th Cir. 2012) ("Cooper") (emphasis in original).

In fact, the district court below cited *Cooper* to explain the *Rooker-Feldman* doctrine, ER at 5:22-25, but apparently did not take into account that *Cooper expressly endorses* the two-step analysis that first requires an express determination whether the federal complaint is a de facto appeal, before considering whether other issues are "inextricably intertwined" with the de facto appeal. *See*, *Cooper, supra*, 704 F.3d at 778 (Stating that the Ninth Circuit has [15] emphasized that "[o]nly when there is already a forbidden de facto appeal in federal court does the 'inextricably intertwined' test come into play," citing *Noel, supra*, 341 F.3d at 1158.)

B. The District Court's Erroneous Application of *Rooker-Feldman* Is Reversible Error

Although the introductory paragraph of the district court's order dismissing Garmong's complaint very briefly refers to its conclusion that the complaint is a de facto appeal, ER at 5:17-19, the order actually never discusses whether the relevant factors for a finding of a de facto appeal are present. If it had done so, the only possible conclusion was that the complaint is *not* a de facto appeal, because it seeks relief that has absolutely no effect on the underlying state court judgments.

If the federal district court below had correctly applied the *Rooker-Feldman* doctrine, it would have first asked whether Garmong's complaint is "asserting as legal wrongs the allegedly erroneous legal rulings of

the state court." *Noel*, *supra*, 341 F.3d at 1156. Garmong's complaint does allege error in the relevant orders and rulings, but that error is in the refusal of the orders and rulings to address relevant issues (including jurisdiction), statutes, and precedents, and in failing to explain their reasoning on critical issues, not in the judgments reaching a wrong result. The complaint never alleges that, had the defendant justices acted properly, Garmong would have prevailed in the underlying appeals—nor do any of the damages or [16] relief requested depend on such a claim. ER at 34-38, ¶¶ 50-52, 56-58, 62-64, 67-68, 71-72, 76-78.

But, regardless of whether those allegations are sufficient to provide the first essential element of a de facto appeal determination, it is indisputable that the second essential element is not present: no claim for relief seeks to *vacate or set aside* any portion of the underlying state court judgments or seeks relief from those judgments in any way—explicitly or implicitly. An examination of the relief requested in the complaint shows that the requested relief leaves the state court judgments completely intact and unaffected, fully operational in all repects.[1]

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[1] Defendants argued below that the complaint's request for declaratory relief was, "in essence, an undoing of the prior state court judgments." ER at 22, note 1. But the relief requested in the complaint is not an "undoing" of the prior state court judgments at all, because those judgments would not be affected or modified in any way whatsoever, even by the declaratory or prospective injunctive relief that is requested. The judgments would stand completely unchanged. Nor does the requested relief in any way affect or impede the *execution* or *enforcement* of any of the state court

Following are the paragraphs seeking relief for the first and second causes of action, based on an alleged deprivation of the right to due process and equal [17] protection under the Fourteenth Amendment in violation of 42 U.S.C. § 1983, against all defendants:

> 50. As a result of these constitutional violations by the Defendants, and each of them, in both their official and individual capacities, Plaintiff has suffered monetary damages, in an amount subject to proof.
>
> 51. In addition to monetary damages, Plaintiff is entitled to declaratory and injunctive relief, to protect him against similar deprivation of his Constitutional rights in the future.
>
> 52. Plaintiff has been forced to engage the services of an attorney to pursue this matter and vindicate his Constitutional rights and is therefore entitled to recover those attorney's fees and costs, reasonably incurred, together with interest, from the Defendants, and each of them.

ER at 34-35, ¶¶ 50-52 and 56-58. The same requests for relief are repeated in the third through sixth causes of action, seeking only monetary damages, declaratory and injunctive relief not affecting the underlying judgments, and attorney fees. ER at 35-37, ¶¶ 62-64, 67-68, 71-72, and 76-78.

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judgments. Therefore, the Anti-Injunction Act, 28 U.S.C. § 2283, is not applicable.

In the final prayer for relief, the complaint requests the following categories of relief:

> 79. A declaration that the Justices violated Plaintiff's due process and equal protection rights under the Fourteenth Amendment.
>
> 80. A preliminary and permanent injunction prohibiting Defendants from violating Plaintiff's Constitutional rights under the Fourteenth Amendment and under Article 1 § 8(5) of The Constitution of the State of Nevada in any pending or future cases.
>
> [18] 81. An award of monetary damages, compensatory and punitive, with liability to be assessed against the Defendants, and each of them, in both their official and personal capacities, together with prejudgment interest in an amount to be calculated.
>
> 82. An award of reasonable attorney's fees and costs, together with prejudgment interest in an amount to be calculated.
>
> 83. Any further relief this Court deems appropriate.

ER at 37-38, at ¶¶ 79-83.

None of these requests seeks any form of relief from the underlying state court judgments, or any alteration to those judgments in any way. They remain fully enforceable in their original forms. Thus, the complaint does not request any relief that amounts to a direct or de facto appeal of those judgments, and the *Rooker-Feldman* inquiry, therefore, ends at that

determination. No analysis of the "inextricably intertwined" stage of the *Rooker-Feldman* analysis was required or even appropriate. *See Cooper, supra*, 704 F.3d at 778; *Bell, supra*, 709 F.3d at 897; *Noel, supra*, 341 F.3d at 1158. The district court's grant of the Defendants' Rule 12(b) motion to dismiss the complaint on the ground that it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine should be reversed.

[19] CONCLUSION

For all of the reasons discussed above, plaintiff and appellant Gregory Garmong respectfully requests that the order of the U.S. District Court for Nevada dismissing the complaint be reversed and remanded for further proceedings after Defendants file their responsive pleading.

STATEMENT OF RELATED CASES

There are no related cases pending before this Court.

DATE: August 18, 2017

LAW OFFICES OF RUEL WALKER

s/ W. Ruel Walker
W. Ruel Walker
Counsel for Appellant

[Certificates Omitted]