No. 18-204

In the Supreme Court of the United States

PORTFOLIO RECOVERY ASSOCIATES, LLC,
Petitioner,

v.

IRIS POUNDS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Fourth Circuit abuse its discretion by denying Petitioner's 28 U.S.C. § 1453(c)(1) petition for permission to appeal?

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STATEMENT

Respondents in this case filed a state-court class action against Portfolio Recovery Associates, LLC ("PRA") alleging that default judgments PRA sought and obtained in North Carolina district courts violated North Carolina law. Petitioner's Appendix ("App.") 23a-25a. Respondents' first claim for relief ("Claim I") seeks a declaration that the default judgments are void for lack of subject-matter jurisdiction and requests vacatur of the judgments. App. 39a–40a ¶¶ 55-57. The second and third claims ("Claim II" and "Claim III") seek statutory penalties and actual damages. App. 41a-42a ¶¶ 59–63, 65-66.

PRA removed the case to the United States District Court for the Middle District of North Carolina.[1] Respondents moved to remand pursuant to the *Rooker–Feldman* doctrine.[2] App. 4a. In its opposition to the motion to remand, PRA argued that *Rooker–Feldman* does not apply to void judgments, App. 8a; that *Rooker-Feldman* applies only to "a final judgment from the highest court of a State in which a decision could be had," App. 9a (quoting in full Dist.

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[1] PRA noticed removal pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453 (2016). App. 46a.

[2] The *Rooker–Feldman* doctrine bars review by federal district courts of "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 Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

R.17:7-11, n.6);[3] and that *Rooker-Feldman* does not apply where the "[p]laintiffs could have brought (and did bring) their action in state court," App 11a.

On March 28, 2018, the district court granted Respondents' motion to remand.[4] As to Claim I, the district court noted that PRA did not "dispute[] that for Claim I, [Respondents] are state-court losers challenging state-court judgments rendered before the district court proceedings commenced and that the injuries were caused by the state-court judgments." App. 12a-13a. The district court then found that the injuries asserted in Claims II and II invited district court review and rejection of the judgments. App. 16a-18a. Accordingly, the district court found that it lacked jurisdiction.

PRA subsequently petitioned the Fourth Circuit for permission to appeal pursuant to 28 U.S.C. § 1453(c). Cir. R.2:2. On May 17, 2018, the Fourth Circuit denied the request: "Upon review of submissions relative to the petition for permission to appeal, the court denies the petition." App. 1a. On August 14, 2018, PRA filed its petition seeking a writ of certiorari.

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[3] Citations to the district court's docket appear as "Dist. R.[ECF Number]:[Page Number]." Citations to the circuit court's docket appear as "Cir. R.[ECF Number]:[Page Number]."

[4] The district court analyzed separately, and did not remand, the claims of plaintiff Pia Townes, whose default judgment had already been vacated by a state court. *See* App. 19a. Ms. Townes voluntarily dismissed her claims and is not a party to this appeal. *See* Dist. R.44:1.

REASONS FOR DENYING THE PETITION

PRA's petition for a writ of certiorari should be denied for three reasons. First, and most fundamentally, the issue that PRA seeks to present is not properly before this Court. 28 U.S.C. § 1254(1) (2016) authorizes this Court to grant a writ of certiorari to review decisions by courts of appeals. The Fourth Circuit did not adopt or endorse the reasoning of the District Court; rather, the Fourth Circuit denied a 28 U.S.C. § 1453(c)(1) request for permission to appeal, a decision the statute commits to the discretion of the court of appeals. There is no basis upon which this Court can infer the reasons that the Fourth Circuit determined, in its discretion, to deny PRA's request. Second, none of the purported circuit conflicts PRA identifies is germane to the question PRA seeks to present in this case. Thus this case does not present a vehicle for resolving these purported conflicts. Finally, the Fourth Circuit's summary decision does not merit certiorari review for any other compelling reason.

I. The Fourth Circuit's discretionary denial of permission to appeal cannot be presumed to have decided the question PRA seeks to present.

Under 28 U.S.C. § 1453, the Fourth Circuit had discretion as to whether or not to grant permission to appeal the district court's order. *See* 28 U.S.C. § 1453(c)(1) (stating the "court of appeals may accept an appeal"); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 555 (2014) (explaining that "court of appeals review of a remand order is discretionary" and the standard of review is "abuse of discretion") (internal quotation omitted).

PRA, however, presents no argument that the Fourth Circuit abused its discretion when it denied PRA leave to appeal. Instead, PRA proposes a question not answered by the Fourth Circuit: "Does the *Rooker–Feldman* doctrine prohibit a federal district court from exercising jurisdiction over an independent action challenging the validity of a prior state-court judgment for lack of jurisdiction, when a state trial court could do so?" Pet. *i*. PRA does not demonstrate that the Fourth Circuit decision to deny the request for permission to appeal was based on its answer to this question.

In *Dart Cherokee*, this Court identified numerous elements from which it inferred that the basis for the Tenth Circuit's decision to deny a request to appeal was an erroneous conclusion of law. In contrast, in this case there is no basis upon which this Court can "fairly infer[]" the reasoning underlying the Fourth Circuit's exercise of discretion. *Dart Cherokee*, 135 S. Ct. at 557 n.7.

In particular, the parties' failure to identify alternative possible grounds for the Tenth Circuit's exercise of discretion was significant to this court in *Dart Cherokee*. *Id.* at 556-58. Here, there are many potential reasons for the Fourth Circuit's decision.

For example, the Fourth Circuit's exercise of its discretion to deny permission to appeal might have been prompted by the fact that the question presented was not CAFA[5]-related. In the present case,

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[5] Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.).

Respondents argued that a discretionary appeal was not warranted for this reason. *See, e.g.*, Cir. R.9:5-6, n.2 (citing *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 38 (1st Cir. 2009) (observing that the "presence of an important CAFA-related question is a factor weighing in favor of allowing an application for leave to appeal," while conversely, "[t]he presence of a non-CAFA issue (even an important one) is generally not thought to be entitled to the same weight"); *Peralta v. Countrywide Home Loans, Inc.*, 375 Fed. App'x 784, 785 (9th Cir. 2010) (agreeing "the presence of an important, but non-CAFA issue, does not warrant interlocutory appellate review of a remand order"); *Alvarez v. Midland Credit Mgmt., Inc.*, 585 F.3d 890, 894 (5th Cir. 2009) (observing that "[n]othing about the *Rooker–Feldman* doctrine . . . is unique to CAFA")).

In addition, the Fourth Circuit might have regarded the question PRA sought to present on appeal as insufficiently novel or important, *see, e.g.*, Cir. R.9:4-5, or the Fourth Circuit could have relied on "countless other, permissible, reasons—for example, a concern that this would be a poor vehicle for deciding the issue presented by [petitioner]'s appeal, or a concern regarding the court's ability to quickly resolve the issue, see § 1453(c)(2)–(3) (providing that appeals accepted under § 1453(c)(1) must be decided within 60 days, absent consent of the parties, with a 10–day extension for 'good cause shown and in the interests of justice')." *Dart Cherokee*, 135 S. Ct. at 559 (Scalia, J., dissenting).

In *Dart Cherokee*, this Court concluded that "[f]rom all signals one can discern then, the Tenth Circuit's

denial of Dart's request for review of the remand order was infected by legal error." 135 S. Ct. at 556–57. Here no such signals exist.[6] "Caution is in order when attributing a basis to an unreasoned decision." *Id.* at 557 n.7. Because this Court cannot properly determine the basis for the Fourth Circuit's discretionary denial of PRA's request for permission to appeal, PRA's petition for a writ of certiorari should be denied.

II. The issue PRA seeks to present does not warrant a writ of certiorari.

PRA's petition for a writ of certiorari should not be granted absent "compelling reasons." U.S. Sup. Ct. R. 10. No such reasons exist: the purported circuit conflicts PRA identifies cannot reasonably be resolved through this case. Even if the Fourth Circuit's decision were not an unexplained discretionary denial of permission to appeal, but rather repeated verbatim the decision of the district court, this case nonetheless would not be appropriate for a writ of certiorari.

A. The Fourth Circuit decision does not conflict with the decision of any other circuit court.

PRA argues that four different intra- and inter-circuit conflicts render the question PRA seeks to present appropriate for a writ of certiorari. None of the purported conflicts provides any support for PRA's position. Three of the four conflicts relate to the

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[6] Unlike in *Dart Cherokee*, the Fourth Circuit does not even refer to the "applicable law" in its decision. 135 S. Ct. at 556; App. 2a ("Upon review of submissions relative to the petition for permission to appeal, the court denies the petition.").

doctrines of preclusion and full faith and credit, not to *Rooker-Feldman*; the remaining purported conflict relates to a potential fraud exception to *Rooker-Feldman* not at issue in this case. At no point does PRA plausibly allege a genuine circuit conflict with respect to the question it seeks to present in its petition: "Does the *Rooker–Feldman* doctrine prohibit a federal district court from exercising jurisdiction over an independent action challenging the validity of a prior state-court judgment for lack of jurisdiction, when a state trial court could do so?" Pet. *i*. This factor therefore weighs against granting the writ of certiorari.

i. Section II.A of the petition

Section II.A of the petition purports to present the first of several conflicts "over the application of *Rooker–Feldman* to attacks on allegedly void state court judgments." Pet. 11. In actuality, PRA mistakes the discussion of void judgments in the context of preclusion and full faith and credit principles for a discussion of the *Rooker-Feldman* doctrine.

Not one of the cases cited in this section applies the *Rooker-Feldman* doctrine. *See, e.g.*, *Twin City Fire Ins. Co. v. Adkins*, 400 F.3d 293, 297 (6th Cir. 2005) (explaining the "doctrine is inapposite" because "*Rooker/Feldman* does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court" before going on to discuss preclusion issues) (internal quotation omitted); *United States v. Bigford*, 365 F.3d 859, 862-72 (10th

Cir. 2004) (considering state court loser *defendant*'s[7] allegations that state court child support order is void and not mentioning *Rooker-Feldman*); *United States v. Kramer*, 225 F.3d 847, 848-57 (7th Cir. 2000) (also considering state court loser *defendant*'s allegations that state court child support order is void and not mentioning *Rooker-Feldman*); *Hudson Drydocks, Inc. v. Wyatt Yachts Inc.*, 760 F.2d 1144, 1146-47 (11th Cir. 1985) (discussing full faith and credit principles, not *Rooker-Feldman*, while considering state court loser *defendant*'s argument that state court judgment sought to be enforced was void). This discussion of void judgments outside of the *Rooker-Feldman* context is simply inapposite to the *Rooker-Feldman* question PRA seeks to present.

ii. Section II.C of the petition

Similarly, in Section II.C, PRA claims that the district court's decision conflicts with a purported rule in the Fifth and Ninth Circuit requiring a judgment to have preclusive effect in order for *Rooker-Feldman* to apply. This argument is unavailing for two reasons.

First, as the District Court correctly noted, the plaintiffs in both *Davis v. Bayless*, 70 F.3d 367 (5th Cir. 1995) and *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987 (9th Cir. 2002) did not comport with the standard later announced in *Exxon Mobil*: that *Rooker-Feldman* applies if and only if claims have been "brought by state-court losers complaining of

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[7] *Rooker–Feldman* only applies if the state-court loser is the *plaintiff*. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." App. 11a-12a (quoting in full *Exxon Mobil*, 544 U.S. at 284); *accord Uresti v. Berchelmann*, 545 Fed. App'x 271, 273 (5th Cir. 2013) (explaining that in *Davis* "no state court judgment was rendered" against the plaintiffs); *Fontana*, 307 F.3d at 990, 995-96 (noting first that plaintiffs did not own the property when the foreclosure judgment at issue was entered, then explaining *Rooker-Feldman* did not apply because plaintiffs "challenge[d] the Defendants' post-judgment conduct that occurred after the foreclosure judgment was entered" and did not seek to vacate the judgment).

Second, the "rule" set forth in *Davis* and the following line of cases erroneously conflates *Rooker-Feldman* and principles of preclusion, a common error among courts prior to a clarification of the issue provided in *Exxon Mobil*. *See, e.g.*, *Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 28 (1st Cir. 2005) ("[W]e recognize that *Exxon Mobil* has effectively abrogated [prior First Circuit precedent] to the extent that they state that *Rooker-Feldman* doctrine only applies to state court judgments with preclusive effect."); *cf. Lance v. Dennis*, 546 U.S. 459, 466, (2006) ("The District Court erroneously conflated preclusion law with *Rooker–Feldman*.").

Post-*Exxon Mobil* courts now recognize that *Rooker-Feldman* is not res judicata by another name. *See, e.g.*, *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 384 n.4 (5th Cir. 2013) ("The Supreme Court's decision in *ASARCO Inc. v. Kadish,* 490 U.S. 605, 622–23 . . . (1989),

includes language that, before *Exxon Mobil,* was read by some as making preclusion analysis a part of *Rooker–Feldman* analysis. As the Tenth Circuit has explained, *ASARCO* did not expand *Rooker–Feldman* in this way.") (citing *Bolden v. City of Topeka, Kan.,* 441 F.3d 1129, 1145 (10th Cir. 2006); *Exxon Mobil,* 544 U.S. at 287 n.2); *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613-14 (9th Cir. 2007) (citing *Exxon Mobil* for the proposition that "*Rooker–Feldman* does not override or supplant issue and claim preclusion doctrines" and applying *Rooker-Feldman* to bar "a request to declare the state court judgment void").

iii. Section II.D of the petition

In the same vein, Section II.D of the petition erroneously paints the Fourth Circuit's preclusion and full faith and credit jurisprudence as in conflict with its own *Rooker-Feldman* jurisprudence. Again, the doctrines are separate and no such conflict exists.

The Fourth Circuit's decision in *Morrel* has nothing to do with *Rooker-Feldman*—that decision considers a federal court's power to review the judgment of a fellow federal tribunal. *See Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 223 (4th Cir. 1999). Likewise, *Yale* involves an enforcement action brought by a state court *winner* and does not mention *Rooker-Feldman*. *Yale v. Nat'l Indem. Co.*, 602 F.2d 642, 644 (4th Cir. 1979). While *Resolute Ins. Co.* does address, in one paragraph, the application of *Rooker*, the Fourth Circuit's statement that collateral attacks may be had on state court judgments obtained by "fraud, deception, accident, or mistake" is not included in its discussion of *Rooker*, but rather in the following paragraph discussing preclusion as a separate ground for the

court's holding. *Resolute Ins. Co. v. North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968). While it is not entirely clear what the purported conflict between these Fourth Circuit cases is, what is clear is that again, no *Rooker-Feldman* issue is at play in Section II.D.

iv. Section II.B of the petition

The only purported circuit split that reaches the *Rooker-Feldman* doctrine is presented in Section II.B. of the petition. PRA argues that there is a circuit split as to whether "fraud and mistake" can be "bases for voiding state court judgments" to which *Rooker-Feldman* would otherwise apply, a so-called fraud exception to the doctrine. Pet. 12. If any such split still exists, it has no relevance to the case at hand or the question presented—Respondents allege that the state court judgments at issue are void for lack of jurisdiction, not voidable due to fraud or mistake. *See, e.g.*, Pet. 3-4 (characterizing Respondent's request for declaratory judgment as alleging "the default judgments are void because the state courts that entered them lacked subject-matter jurisdiction"); App. 1a-52a (never mentioning the word "fraud" in any of the documents). This case is not an appropriate vehicle to decide any issues regarding a purported fraud exception to *Rooker-Feldman*. Furthermore, as previously noted, the Fourth Circuit decision in *Resolute Ins. Co.* does not create a fraud exception to *Rooker-Feldman*. 397 F.2d at 589.

Notwithstanding the irrelevance of any fraud exception to this case, PRA also misapprehends the precedent upon which it relies when describing the purported split. Every case PRA cites in support of a

fraud exception to *Rooker-Feldman* was decided prior to this Court's decision in *Exxon-Mobil*. This precedent therefore has little relevance to the current state of *Rooker-Feldman* jurisprudence. The limitations of this approach are apparent—PRA lists the Second and Fifth Circuits as both *endorsing* the fraud exception (in earlier decisions) and *opposing* it (in later decisions). *See* Pet. 12-13.

B. There are no other compelling reasons to grant PRA's petition.

The Fourth Circuit's unpublished summary denial of a discretionary appeal decides no important federal question; in fact it decides no question at all. *See supra* Section I. Moreover, PRA's piecemeal and contradictory arguments regarding purported circuit conflicts further illustrate that this case is not an appropriate vehicle for the resolution of any important federal question. *See supra* Section II.A.

Nor does the Fourth Circuit's decision depart from the accepted and usual course of judicial proceedings or sanction such a departure by the district court. In this case, the "precedent on which the District Court relied" did not "misstate[] the law." *Dart Cherokee*, 135 S. Ct. at 557-58. To the contrary, the district court's straightforward application of *Exxon Mobil* was correct, and petitioners have offered no reason to doubt it. In fact, PRA does not contest that the district court rightly found (1) that this case was "brought by state-court losers," Respondents, who lost by default in debt collection proceedings in North Carolina courts; (2) that Respondents' claims "complain[] of injuries caused by state-court judgments rendered before the district court proceedings commenced;" and (3) that Respondents'

claims, if pursued in federal court, would "invit[e] district court review and rejection of those judgments." App. 12a-19a (quoting *Exxon Mobil*, 544 U.S. at 284).

The Fourth Circuit's discretionary, non-precedential decision, which has no apparent ramifications beyond the instant case, does not satisfy any of the criteria for the exercise of this Court's discretionary jurisdiction. *See* U.S. Sup. Ct. R. 10.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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