No. 18-204

In the Supreme Court of the United States

PORTFOLIO RECOVERY ASSOCIATES, LLC,
Petitioner,

v.

IRIS POUNDS; CARLTON MILLER; VILAYUAN SAYAPHET-TYLER; RHONDA HALL,
Respondents.

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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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INTRODUCTION

The *Rooker-Feldman*[1] doctrine prohibits lower federal courts from exercising appellate review over state-court judgments. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284-85 (2005). The petition for certiorari presented a circuit split on the issue of whether *Rooker-Feldman* bars federal actions that do not seek appellate review of state-court judgments, but instead attack state-court judgments as void—like the one Respondents brought here.

Respondents filed this case in North Carolina superior court seeking to set aside default judgments that had been entered against them in state court. Respondents argued that the default judgments were void because the courts that issued them lacked subject-matter jurisdiction. Respondents did not seek appellate review of the default judgments in state court. Instead, they asked a state trial court to exercise original jurisdiction over an independent action to declare the default judgments void for lack of jurisdiction. *See* N.C. R. Civ. P. 60(b) (recognizing that North Carolina trial courts may hear independent actions seeking to set aside void judgments).

Petitioner Portfolio Recovery Associates, LLC (PRA) removed the action to federal district court, asking the district court to likewise exercise original jurisdiction over Respondents' independent action. *See* Fed. R. Civ. P. 60(b)(4), (d)(1) (recognizing that

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[1] *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923).

district courts may hear independent actions seeking to set aside void judgments).

As PRA's petition for certiorari showed, there is longstanding precedent from this Court and other courts recognizing the district courts' authority to hear independent actions challenging state-court judgments as void for lack of jurisdiction or fraud. Pet. 8-9, 11-13. Nonetheless, the district court remanded the case, believing it lacked jurisdiction over Respondents' action under the *Rooker-Feldman* doctrine.

PRA's petition also showed that the district court, the Fourth Circuit, and several other circuits have misinterpreted this Court's *Rooker-Feldman* jurisprudence to prohibit the district courts from hearing *all* actions challenging state-court judgments that are brought by state-court losers, even when those actions do not seek appellate review but instead allege that the judgments were issued without jurisdiction or were fraudulently obtained. Pet. 10, 13.

Certiorari should be granted to clarify this important issue of federal jurisdiction.

ARGUMENT

I. The District Court's Interpretation of *Rooker-Feldman* is Properly Before this Court.

Respondents initially argue that the district court's *Rooker-Feldman* ruling is not properly before this Court because the Fourth Circuit denied PRA's application for permission to appeal that ruling. Opp. Br. 3-6. Respondents are incorrect. This Court has reviewed denials of applications to appeal remand

orders under section 1453(c)(1) on numerous occasions. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554-55 (2014) (reviewing appellate court's denial of petition to appeal where appellate court did not provide reasons for the denial); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 591 (2013) (same). This Court, therefore, has jurisdiction to review the Fourth Circuit's denial of PRA's section 1453(c)(1) appeal application.

When this Court reviews a summary denial of a section 1453(c)(1) appeal application, it looks to the legal basis for the district court's decision to determine whether the district court made an error of law. *See Dart Cherokee*, 135 S. Ct. at 555-58; *Knowles*, 568 U.S. at 592-96. If so, this Court will reverse the circuit court's denial of an appeal application if the circumstances indicate that the circuit court believed that the district court's decision was legally correct. *See Dart Cherokee*, 135 S. Ct. at 555-58.

These circumstances are present here. Relying on earlier Fourth Circuit decisions, the district court concluded that the *Rooker-Feldman* doctrine prohibits *all* federal actions challenging state-court judgments brought by state-court losers—even actions challenging state-court judgments as void for lack of jurisdiction, and even if the state-court losers could bring the actions in state court. *See* App. 8a-12a. The district court relied on the Fourth Circuit's decisions in *Chien v. Grogan*, 710 F. App'x 600, 600 (4th Cir. 2018), and *Horowitz v. Cont'l Cas. Co.*, 681 F. App'x 198, 200 (4th Cir. 2017), for this proposition, both of which hold that *Rooker-Feldman* prohibits a state-court loser from attacking a state-court judgment on any ground—including that the

judgment is void. App. 9a. As PRA's petition showed, the district court's interpretation of *Rooker-Feldman* is erroneous under this Court's case law. Pet. 5-9.

The circumstances here also show that the Fourth Circuit agreed with the district court's mistaken understanding of *Rooker-Feldman*. For one, the Fourth Circuit's decisions in *Chien* and *Horowitz* demonstrate the Fourth Circuit's own misunderstanding of the *Rooker-Feldman* doctrine. *See Chien*, 710 F. App'x at 600; *Horowitz*, 681 F. App'x at 200. The fact that the Fourth Circuit denied PRA's appeal application also indicates that the Fourth Circuit agreed with the district court's interpretation of *Rooker-Feldman*. *See Dart Cherokee*, 135 S. Ct. at 556.

Respondents' arguments to the contrary are misguided. Respondents argue, first, that the Fourth Circuit did not consider the applicable law in denying PRA's appeal application because the summary denial did not specifically say that the Fourth Circuit considered the applicable law. Opp. Br. 6 n.6. Of course, ignoring the applicable law would be an abuse of discretion that would subject the Fourth Circuit's decision to reversal. *See F.T.C. v. AbbVie Prods. LLC*, 713 F.3d 54, 61 (11th Cir. 2013).

Respondents also argue that the *Rooker-Feldman* question is not properly before this Court because the question is not specific to class actions. *See* Opp. Br. 4-5. Section 1453(c)(1), however, does not limit appeals of remand orders to those that present class-action-specific questions. *See* 28 U.S.C. § 1453(c)(1). Instead, that section protects a defendant's right to have a qualifying class action filed against it

adjudicated in federal court. *Dart Cherokee*, 135 S. Ct. at 555-56.

Here, the district court's remand order, which misinterpreted this Court's *Rooker-Feldman* jurisprudence, denied PRA that right. For the reasons stated above, this Court has jurisdiction to review that decision.

II. PRA's Petition Presented a Circuit Split on Whether *Rooker-Feldman* Bars Federal Actions Brought by State-Court Losers that Challenge State-Court Judgments as Void for Lack of Jurisdiction or Fraud.

PRA's petition showed that the federal circuits disagree on the interaction between the *Rooker-Feldman* doctrine and the long-standing principle that courts may hear independent actions challenging judgments issued by other courts as void due to lack of jurisdiction or fraud. Pet. 11-17. Some circuits hold that state-court losers may bring an independent action in federal court that challenges an unfavorable state-court judgment as void for lack of jurisdiction or fraud. *Id.* at 11-16. Other courts, however, hold that *Rooker-Feldman* categorically prohibits state-court losers from bringing actions to invalidate a state-court judgment in federal court—even actions that claim a judgment is void for lack of jurisdiction or fraud. *Id.* at 10, 13.

Respondents present several arguments that attempt to challenge the existence of the circuit split. All are misguided.

First, Respondents argue that PRA's petition did not show a circuit split on the proper application of *Rooker-Feldman* because some of the cases the

petition cites do not mention *Rooker-Feldman* by name. Opp. Br. 6-8. This fact actually supports PRA's argument that the *Rooker-Feldman* doctrine does not prohibit the federal courts from hearing actions challenging state-court judgments as void for lack of jurisdiction or fraud.

PRA's argument is that *Rooker-Feldman* simply does not apply where a state-court litigant brings an independent action in federal court attacking a state-court judgment as void for lack of jurisdiction or fraud, because such an action does not seek appellate review of the state-court judgment. The fact that several courts have heard this type of independent action without mentioning *Rooker-Feldman* supports PRA's argument that *Rooker-Feldman* does not bar such suits in federal court.

Second, Respondents argue that, in evaluating PRA's petition, this Court should disregard *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995), and *Fontana Empire Center v. City of Fontana*, 307 F.3d 987, 995 (9th Cir. 2002), which hold that federal courts have jurisdiction to hear a collateral attack on a state-court judgment if the trial courts of that state would have jurisdiction to hear the collateral attack. Opp. Br. 9. According to Respondents, *Davis* and *Fontana* conflate *Rooker-Feldman* with preclusion doctrine, which this Court instructed against in *Exxon*. *Id.* at 9-10. Respondents are incorrect: Their argument is contradicted by the *Davis* and *Fontana* opinions, themselves.

Neither *Davis* nor *Fontana* discusses preclusion. *See Fontana*, 307 F.3d at 992-95; *Davis*, 70 F.3d at 375-76. Nor does either case set up a preclusion-like requirement. *See id.* Preclusion asks whether an

issue has already been litigated in a prior action, or whether the issue could and should have been raised in the prior action. *See* 18 Charles Alan Wright et al., Fed. Prac. & Proc. Juris. § 4406 (3d ed. 2018) (discussing claim preclusion); *id.* § 4416 (discussing issue preclusion). *Davis* and *Fontana*'s standard for allowing federal collateral attacks on state-court judgments does not deal with these questions. Instead, it asks whether the same collateral attack could be brought as an independent action in state court. *Fontana*, 307 F.3d at 995; *Davis*, 70 F.3d at 376. If it could, then the collateral attack can also proceed in federal court. *See id.*

As PRA's petition showed, *Davis* and *Fontana*'s approach comports with this Court's *Rooker-Feldman* jurisprudence. *See* Pet. 14-16. It stands in stark contrast to the district court's decision in this case, which prohibits all federal actions challenging state-court judgments brought by state-court losers—even actions challenging state-court judgments as void for lack of jurisdiction, and even when those independent actions could be brought in state court. *See* App. 8a-12a.

Respondents also urge this Court to disregard *Davis* and *Fontana* because, in those cases, other elements necessary for application of the *Rooker-Feldman* doctrine were not satisfied. Opp. Br. 8-9. Again, Respondents are mistaken. *Davis* and *Fontana* show that the Fifth and Ninth Circuits do not read the *Rooker-Feldman* doctrine to prohibit federal courts from hearing independent actions challenging state-court judgments if the same actions could be brought in state court. *Fontana*, 307 F.3d at 995; *Davis*, 70 F.3d at 376. The fact that *Rooker-Feldman* may have been inapplicable in *Davis* and

Fontana for other independent reasons does not undercut this point.[2]

Third, Respondents dispute the existence of an intra-Fourth-Circuit conflict on whether *Rooker-Feldman* prohibits federal district courts from hearing independent actions challenging state-court judgments on fraud grounds. Op. Br. 10-11. Respondents are incorrect.

PRA's petition showed an intra-Fourth-Circuit conflict on whether *Rooker-Feldman* prohibits federal courts from hearing *all* actions brought by state-court losers that challenge offending state-court judgments. Under *Chien* and *Horowitz*, all such actions—even those that allege the judgments are void—are barred by *Rooker-Feldman*. *Chien*, 710 F. App'x at 600; *Horowitz*, 681 F. App'x at 200. Under *Resolute Insurance Company v. North Carolina*, however, a state-court loser may challenge a state-court judgment in federal court if she argues that the judgment is void on fraud grounds. 397 F.2d 586, 589 & n.2 (4th Cir. 1968). There is a clear conflict between these two standards. A decision by this Court clarifying that *Rooker-Feldman* does not bar independent actions brought in federal court that challenge state-court judgments as void for lack of jurisdiction or fraud would resolve this conflict.

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[2] Respondents also suggest that *Davis* and *Fontana* are no longer good law after *Exxon*. Opp. Br. 9-10. This is not the case. Both remain good law, and both are still cited for the proposition that federal courts may hear independent actions challenging state-court judgments if the trial courts in that state could hear such actions. *See, e.g.*, *Riley v. La. State Bar Ass'n*, 214 F. App'x 456, 458 (5th Cir. 2007) (citing *Davis*, 70 F.3d 367); *In re Razzi*, 533 B.R. 469, 480 n.13 (Bankr. E.D. Pa. 2015) (citing *Fontana*, 307 F.3d at 993-94; *Davis*, 70 F.3d at 376).

Finally, Respondents acknowledge that there is a split amongst the circuits on whether the *Rooker-Feldman* doctrine prohibits independent actions brought by state-court losers that challenge the offending state-court judgments on fraud grounds. Opp. Br. 11. Respondents suggest, however, that the cases recognizing a fraud exception have been undercut by *Exxon*. *Id.* at 11-12. This is not the case.

Exxon held that the *Rooker-Feldman* doctrine bars only federal actions brought by state-court losers that seek district-court *review* (i.e. appellate review) of offending state-court judgments. *Exxon*, 544 U.S. at 284. Independent actions that challenge a state-court judgment as fraudulently obtained do not seek appellate review of the state court's decision. Instead, such actions assert that an adverse party in the suit committed a legal wrong. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140-41 (9th Cir. 2004). The *Rooker-Feldman* doctrine, as clarified by the Court in *Exxon*, does not prohibit the federal courts from hearing such a claim. *Id.*

Indeed, pre-*Exxon* cases recognizing that *Rooker-Feldman* does not prohibit federal actions challenging state-court judgments on fraud grounds remain good law after *Exxon* and continue to be regularly cited. *See, e.g.*, *Int'l Christian Music Ministry Inc. v. Ocwen Fed. Bank, FSB*, 289 F. App'x 63, 65 (6th Cir. 2008) (citing *In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986)); *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (citing *Kougasian*, 359 F.3d at 1139-41). Thus, there is a live circuit split on whether *Rooker-Feldman* bars federal actions challenging state-court judgments as void—including on fraud grounds.

PRA's petition showed a distinct circuit split on whether the *Rooker-Feldman* doctrine bars federal courts from hearing *all* actions challenging state-court judgments brought by state-court losers—even those that do not seek appellate review of the state-court judgments but instead allege that the judgments are void for lack of jurisdiction or fraud. This Court should intervene to clarify this important question of federal jurisdiction.

CONCLUSION

For the foregoing reasons, and those stated in the petition, PRA respectfully requests that its petition for certiorari be granted.

Respectfully submitted this 31st day of October, 2018.

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