No. 19-1153

In the Supreme Court of the United States

RUSSELL A. SUZUKI, ET AL., PETITIONERS

v.

CHRISTOPHER DEEDY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding that the *Rooker-Feldman* doctrine did not divest the district court of jurisdiction over respondent's habeas petition filed under 28 U.S.C. § 2241.

2. Whether the court of appeals erred in holding that the trial court's ruling, at respondent's first trial, that there was not "any evidence to support" a jury instruction on manslaughter liability was an acquittal barring his retrial on that offense.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Haw.):

Deedy v. *Connors*, No. 18-cv-00094 (Apr. 9, 2020)

United States Court of Appeals (9th Cir.):

Deedy v. *Espinda*, No. 20-15816 (docketed Apr. 29, 2020)

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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 3-7) is unpublished but is available at 788 Fed. Appx. 549. The original opinion of the court of appeals is unpublished but is available at 783 Fed. Appx. 780. The order of the district court (Pet. App. 8-52) is reported at 326 F. Supp. 3d 1022.

JURISDICTION

The judgment of the court of appeals was initially entered on November 7, 2019 (Pet. App. 1). The court of appeals issued an amended opinion on December 20, 2019, and a petition for rehearing was denied on the same date (Pet. App. 1-2). The petition for a writ of certiorari was filed on March 18, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

At respondent's first trial for second-degree murder, the state trial court ruled that there was not "any evidence to support manslaughter" and refused

to instruct the jury on that lesser-included offense. Pet. App. 12. That trial ended without a verdict, and respondent was later acquitted of second-degree murder after a new trial. Respondent moved to dismiss his case because the Double Jeopardy Clause bars retrying him on lesser-included offenses of which the court acquitted him at his first trial. The trial court denied that motion, and the state supreme court affirmed. A federal district court later granted respondent habeas relief barring his retrial on the manslaughter charge. The court of appeals affirmed in relevant part.

1. Respondent was a diplomatic security officer with the U.S. Department of State. While off duty during a summit in Honolulu, he fatally shot a man during an incident at a restaurant. Pet. App. 10. Respondent maintains that he acted in self-defense, and that his actions were necessary to protect himself and others. *State* v. *Deedy*, 407 P.3d 164, 183 (Haw. 2017).

State prosecutors charged respondent with second-degree murder and using a firearm to commit that offense. Pet. App. 10. Under Hawaii law, second-degree murder occurs when a person intentionally or knowingly causes the death of another. Haw. Rev. Stat. § 707-701.5. Manslaughter is a lesser-included offense, see *State* v. *Knight*, 909 P.2d 1133, 1139 (Haw. 1996), that occurs when a person recklessly causes the death of another, Haw. Rev. Stat. § 707-702. Hawaii juries must be instructed on lesser-included offenses whenever "there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense." *State* v. *Flores*, 314 P.3d 120, 128 (Haw. 2013). By contrast, when there is a rational evidentiary basis for a jury to find that a defendant

acted intentionally, but not to find that he acted recklessly, then courts do not give a manslaughter instruction on a second-degree-murder charge. *State* v. *Austin*, 422 P.3d 18, 38-39 (Haw. 2018).

2. a. At respondent's first trial, prosecutors argued that respondent intentionally fired the fatal shot. Pet. App. 12. Respondent did not dispute that he intended to shoot the decedent, but contended that he did so only in self-defense. With respondent's intent not in dispute, prosecutors and respondent both "specifically objected to instructing the jury on reckless manslaughter." *Ibid.*

The trial court agreed. It held that there was not "any evidence to support manslaughter." Pet. App. 12. The court therefore instructed the jury only on second-degree murder, and not on manslaughter or assault. *Id.* at 13. Ultimately, respondent's first jury was unable to reach a verdict, resulting in a mistrial. *Ibid.*

b. Hawaii retried respondent. Pet. App. 14. At respondent's second trial, respondent moved to bar any jury instruction on manslaughter or assault, arguing that the trial court's instructional ruling at his first trial had acquitted him of those offenses. *Ibid.* Prosecutors acknowledged that the instructional ruling was "*based on the evidence* presented in the first trial," *id.* at 42 n.18, and reasserted the state's "same position that there's not a rational basis in the evidence to support the giving of the manslaughter instruction," *id.* at 16-17.

This time, however, the trial court overruled the parties' joint objection to instructing the jury on lesser-included offenses. Pet. App. 17. The court concluded that its prior ruling had not acquitted respondent of any offenses because that ruling had not amounted to "a resolution or determination of

guilt or innocence." *Id.* at 18. The trial court went on to instruct respondent's second jury on manslaughter and assault, as well as second-degree murder. *Ibid.* That jury acquitted respondent of second-degree murder, but deadlocked on the other offenses. *Ibid.*

c. Anticipating a third trial, respondent moved to dismiss his indictment, renewing his double-jeopardy objection to being retried for manslaughter or assault. The trial court denied respondent's motion by minute order and certified an interlocutory appeal. That appeal was transferred to the Hawaii Supreme Court, which affirmed in a divided decision. The supreme court majority held that the trial court's ruling at respondent's first trial had been procedural and was not an acquittal on manslaughter or assault. Pet. App. 19; see also *Deedy*, 407 P.3d at 176. The supreme court remanded for further proceedings, and the trial court set a new trial date.

3. a. Following the Hawaii Supreme Court's decision, respondent petitioned for a writ of habeas corpus under 28 U.S.C. § 2241 in the United States District Court for the District of Hawaii. Pet. App. 21. The habeas petition asked the district court to bar respondent's further prosecution for manslaughter and assault on double-jeopardy grounds, and to discharge him from bail and other conditions of his pretrial release. *Ibid.*

The district court granted the writ. Pet. App. 37. The court started by affirming its subject-matter jurisdiction over respondent's Section 2241 petition. *Id.* at 27-35. Petitioners contended that the district court lacked jurisdiction because the state supreme court had denied respondent's double-jeopardy challenge. *Id.* at 28. The district court disagreed, explaining that Section 2241 "provides generally for

the granting of writs of habeas corpus by federal courts." *Ibid.* (quoting *Frantz* v. *Hazey*, 533 F.3d 724, 735 (9th Cir. 2008) (en banc)). All courts of appeals to have addressed the issue, it observed, "have uniformly held that a pretrial petition seeking to preclude a re-trial is properly brought pursuant to § 2241." *Id.* at 29 n.12. The court also relied on *Justices of Boston Municipal Court* v. *Lydon*, 466 U.S. 294 (1984), in which this Court affirmed a district court's assertion of habeas jurisdiction over a double-jeopardy challenge to retrial on grounds that a state's highest court had rejected, *id.* at 299-303. Pet. App. 28.

The court also rejected petitioners' "muddled application of the *Rooker-Feldman* doctrine" as being "entirely without merit or even practical sense." Pet. App. 29-30. The *Rooker-Feldman* doctrine, the court explained, generally "bars a losing party in state court from seeking what amounts to appellate review of [a] state-court judgment in federal court based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Id.* at 29 n.13 (citing *Rooker* v. *Fidelity Tr. Co.*, 263 U.S. 413, 415-416 (1923); *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462, 482-486 (1983)). But "it is well-established" and "beyond serious dispute," the district court emphasized, "that the *Rooker-Feldman* doctrine does not touch the writ of habeas corpus." *Id.* at 32-33. The district court pointed to this Court's recognition, in *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U.S. 280, 292 n.8 (2005), that, by "authorizing federal habeas review," Congress has "explicitly empower[ed] district courts to oversee certain state-court judgments." Pet. App. 33 n.16.

On the merits, the district court held that the trial court acquitted respondent of manslaughter and

assault at his first trial, and that the Double Jeopardy Clause bars retrying him on those offenses. Pet. App. 40. The district court relied on *Evans* v. *Michigan*, 568 U.S. 313 (2013), in which this Court held that "'any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense' is an acquittal that precludes retrial." Pet. App. 38 (quoting 568 U.S. at 318).

The district court reviewed the trial court's colloquy with counsel at respondent's first trial, during which the court "declared 'I don't think there's any evidence to support manslaughter'" and declined to instruct the jury on that offense. Pet. App. 41; see also *id.* at 12-13, 40-48. The court recognized that Hawaii law requires courts to instruct juries on any lesser-included offenses with a rational basis in the evidence. *Id.* at 40-41. "Notwithstanding this obligation," the district court explained, the trial court had "declined to instruct the jury on lesser included offenses, including reckless manslaughter, because the evidence was insufficient to do so." *Id.* at 41. The district court therefore concluded that the trial court's "instructional ruling during the first trial, determining that there was no rational basis in the evidence to give an instruction on reckless manslaughter, was necessarily a determination that the evidence was insufficient to establish [respondent's] criminal liability for the lesser offenses. That, under *Evans*, is an acquittal." *Id.* at 47.

The court rejected petitioners' contention that the trial court's instructional ruling had been too "informal" to constitute an acquittal. Pet. App. 43-45. The court observed that the ruling was made on the record and in open court. *Id.* at 44. In any event, it explained, "neither the label of the ruling, nor the

perceived formality of the proceeding[,] matters." *Ibid.* What matters, the court reasoned, is that the trial court's "decision was based upon its substantive view of the sufficiency of the evidence." *Id.* at 45.

The district court also rejected petitioners' argument that the trial court's characterization of its prior ruling as not having acquitted respondent is controlling. Pet. App. 45-47. "*Evans* makes clear," the court explained, "that even if the [trial] court believes in hindsight that it was erroneous to find that the evidence did not support submitting reckless manslaughter to the jury, that ruling was nonetheless an acquittal." *Id.* at 46.

b. The court of appeals affirmed in part and reversed in part in an unpublished memorandum decision. Pet. App. 4. To begin with, the court of appeals held that the "*Rooker-Feldman* doctrine did not bar the district court from exercising jurisdiction over the § 2241 petition." *Ibid.* The court of appeals cited its prior decision rejecting Hawaii's contrary position in *Gouveia* v. *Espinda*, 926 F.3d 1102, 1107-1110 (9th Cir. 2019), cert. denied, 140 S. Ct. 814 (Jan. 13, 2020).

On the merits, the court of appeals agreed with the district court that respondent was acquitted of manslaughter at his first trial, and that the Double Jeopardy Clause therefore precludes retrying him on that charge. Pet. App. 4. The court of appeals determined that Hawaii's requirement that courts instruct juries on lesser-included offenses that have a rational evidentiary basis means that the trial court's ruling that there was "no evidence to support a manslaughter instruction" was a conclusion that the state's evidence was not sufficient to establish respondent's liability for that offense. *Id.* at 5. That is

an acquittal, the court of appeals held, regardless of what the trial court labeled it or even if it "might have been (according to the State) wrong." *Ibid.* (citing *Evans*, 568 U.S. at 318, 325).

The court of appeals reversed the district court's grant of habeas relief barring respondent's retrial for assault based on a prior acquittal of that offense. Pet. App. 6. The court of appeals concluded that it had been "legally unclear," at the time of respondent's first trial, whether assault was a lesser-included offense of second-degree murder. *Ibid.* The court held that the trial court's implicit decision not to instruct respondent's first jury on assault therefore did not acquit him of it. *Ibid.*

Respondent sought panel rehearing, and both petitioners and respondent sought rehearing en banc. Pet. App. 1-2. The petitions were denied, *ibid.*, but the panel amended its original opinion to allow the district court to consider on remand whether respondent's retrial for assault should be barred based on abandonment or estoppel, *id.* at 6. Judge Smith concurred in part and dissented in part from the amended opinion. He agreed that respondent had been acquitted of the manslaughter charge, but disagreed with the panel majority that there was anything left for the district court to decide on remand about the assault offense. *Id.* at 7.[1]

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[1] On remand, the district court denied respondent a writ of habeas corpus barring his retrial for first- and second-degree assault. *Deedy* v. *Connors*, No. 18-cv-00094, 2020 WL 1815219 (D. Haw. Apr. 9, 2020). The court granted a certificate of appealability, *id.* at *1, and respondent's appeal is pending, *Deedy* v. *Espinda*, No. 20-15816 (9th Cir.).

ARGUMENT

1. Petitioners renew their contention (Pet. 12-19) that the *Rooker-Feldman* doctrine divested the district court of jurisdiction to adjudicate respondent's habeas petition. The court of appeals correctly rejected that contention, and the decision below does not conflict with any decision of this Court or another court of appeals. This Court recently denied review in the case on which the court below relied in rejecting petitioners' argument, see *Espinda* v. *Gouveia*, 140 S. Ct. 814 (2020) (No. 19-516), and the same result is warranted here.

a. The court of appeals was unquestionably correct in upholding the district court's jurisdiction over respondent's habeas petition. The general federal habeas statute, 28 U.S.C. § 2241, empowers the federal district courts to grant relief to a habeas petitioner who "is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2241(c)(3). Under this Court's cases, it is "clear that 'the use of habeas corpus has not been restricted to situations in which the applicant is in actual, physical custody.'" *Justices of Boston Mun. Court* v. *Lydon*, 466 U.S. 294, 300 (1984) (quoting *Jones* v. *Cunningham*, 371 U.S. 236, 239 (1963)). Rather, the federal courts' habeas jurisdiction extends to those habeas petitioners, like respondent, who have been released on pretrial conditions. See *ibid.* The district court thus had jurisdiction under Section 2241 to adjudicate respondent's request for habeas relief.

Petitioners' contrary view rests on the *Rooker-Feldman* doctrine (see *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983); *Rooker* v. *Fidelity Tr. Co.*, 263 U.S. 413 (1923)), which treats

this Court's statutory jurisdiction to exercise appellate review over state-court judgments, 28 U.S.C. § 1257, as implicitly withdrawing jurisdiction from the federal district courts "to review and reverse unfavorable state-court judgments." *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005). The premise of petitioners' argument is that, by barring respondent's retrial for manslaughter, the district court exercised "appellate jurisdiction" and "reverse[d] the judgment" of the Hawaii Supreme Court that had rejected respondent's double-jeopardy claim. Pet. 4; see also *id.* at 9 (contending that "the district court reversed the Hawai'i Supreme Court's decision"); *id.* at 13 (arguing that respondent's petition "invit[ed] the [district] court to review and invalidate the decision rendered by the Hawai'i Supreme Court").

That incorrect premise fundamentally misunderstands the nature of federal habeas review. The writ of habeas corpus vindicates "the right of personal liberty," by empowering the federal courts to order a habeas petitioner's release from unlawful custody. *Fay* v. *Noia*, 372 U.S. 391, 430-431 (1963). The federal court "can act only on the body of the [habeas] petitioner"; "it cannot revise the state court judgment." *Id.* at 431. For that reason, a federal habeas petition is not within the limited category of cases governed by the *Rooker-Feldman* doctrine—*i.e.*, "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*, 544 U.S. at 284.

Of course, district courts exercising habeas jurisdiction routinely address legal issues that state courts

previously decided, as was the case here when the district court resolved respondent's double-jeopardy claim. In fact, habeas petitioners generally must exhaust available state remedies before they file a Section 2241 petition. See, *e.g.*, *Hensley* v. *Municipal Court*, 411 U.S. 345, 353 (1973); *Ex Parte Royall*, 117 U.S. 241, 252-253 (1886). It is therefore commonplace for state courts to have rejected a habeas petitioner's constitutional claim before he seeks federal relief. In *Lydon*, for example, this Court upheld a district court's exercise of habeas jurisdiction to decide a pretrial detainee's double-jeopardy claim after the Massachusetts Supreme Judicial Court had rejected it. See 466 U.S. at 298-303.[2]

That routine feature of habeas review does not convert it into appellate review of state-court judgments. To the contrary, nothing in the *Rooker-Feldman* doctrine "stop[s] a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court." *Exxon Mobil*, 544 U.S. at 293. In that setting, the law of preclusion governs the effect of the state court's decision, but does not deprive the federal court of jurisdiction to proceed. *Ibid.* And it is well-settled that a state court's

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[2] Petitioners appear to argue (Pet. 15-16) that the court of appeals created a special exemption from the *Rooker-Feldman* doctrine for double-jeopardy claims, which petitioners argue "runs afoul" of this Court's statement in *Lydon*, 466 U.S. at 302 n.2, that the same custody standard applies to habeas petitions pressing double-jeopardy claims as to other habeas petitions. That is incorrect. The court of appeals held that the *Rooker-Feldman* doctrine was inapplicable because the district court had jurisdiction to grant habeas relief conferred by 28 U.S.C. § 2241, not because of the nature of respondent's claims.

prior decision on federal constitutional issues is not res judicata in a subsequent federal habeas case. *Brown* v. *Allen*, 344 U.S. 443, 458 (1953).[3]

b. Petitioners are incorrect in contending (Pet. 16) that the court of appeals' decision is an "outlier" among contrary decisions of other circuits. To the contrary, the courts of appeals regularly decide appeals from habeas judgments involving petitions that assert double-jeopardy claims previously rejected by state courts. See, *e.g.*, *Seay* v. *Cannon*, 927 F.3d 776 (4th Cir. 2019), cert. denied, No. 19-311, 2020 WL 1496785 (Mar. 30, 2020); *Marshall* v. *Bristol Superior Court*, 753 F.3d 10 (1st Cir. 2014); *Hoffer* v. *Bezio*, 726 F.3d 144 (2d Cir. 2013); *Phillips* v. *Court of Common Pleas*, 668 F.3d 804 (6th Cir. 2012); *Martinez* v. *Caldwell*, 644 F.3d 238 (5th Cir. 2011); *Walck* v. *Edmundson*, 472 F.3d 1227 (10th Cir. 2007).

Petitioners rely (Pet. 17-19) on *Campbell* v. *City of Spencer*, 682 F.3d 1278 (10th Cir. 2012), as having "applied the teaching of *Exxon*" in a way that conflicts with the decision below. But there is no conflict. The

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[3] In most cases, a criminal defendant must await the conclusion of state court proceedings before seeking federal habeas relief, and thus may face the additional limitations on habeas relief set forth in 28 U.S.C. § 2254. That result, however, is not the product of the *Rooker-Feldman* doctrine, but rather of the holding in *Younger* v. *Harris*, 401 U.S. 37 (1971), that a federal court generally may not interfere with an ongoing state criminal prosecution. See *id.* at 49. *Younger* does not apply here, though, because a "claim that a state prosecution will violate the Double Jeopardy Clause presents an exception" to its abstention rule, *Mannes* v. *Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992); see also, *e.g.*, *Walck* v. *Edmondson*, 472 F.3d 1227, 1234 (10th Cir. 2007); *Gilliam* v. *Foster*, 75 F.3d 881, 904-905 (4th Cir. 1996), and petitioners do not contend that *Younger* barred the district court from adjudicating respondent's double-jeopardy claim in this case.

Tenth Circuit in *Campbell* held that the *Rooker-Feldman* doctrine barred a civil rights suit, filed under 42 U.S.C. § 1983, challenging as "unlawful" a state court order authorizing the seizure of plaintiff's horses. 682 F.3d at 1284. Because *Campbell* did not involve a habeas petition, it does not conflict with the court of appeals' decision in this case upholding the district court's jurisdiction to adjudicate respondent's request for habeas relief.

Petitioners also suggest (Pet. 16-17) that two district court opinions deviate from the decision below. As an initial matter, district court decisions are not precedential and thus do not create a conflict warranting this Court's review. See Sup. Ct. R. 10(a). In any event, the cited decisions are consistent with the decision below. The unpublished order in *Neal* v. *Johnson*, No. 09-cv-458, 2009 WL 10702285 (E.D. Va. July 27, 2009), dismissed a state prisoner's post-conviction Section 2241 petition because "the exclusive remedy for habeas review of his state convictions is under § 2254." *Id.* at *1. The court recognized that "§ 2241(c) extends federal habeas relief over state pretrial detainees," such as respondent here. *Ibid.* The district court's decision in *Niles* v. *Wilshire Investment Group, LLC*, 859 F. Supp. 2d 308 (E.D.N.Y. 2012), involved the dismissal of a lawsuit asking the court "to review, reject, and overturn the results" of various state-court foreclosure, conservatorship, and probate proceedings because those proceedings had themselves been a "vast scheme and conspiracy" of "manipulating and subverting the judicial system." *Id.* at 318. The unique, non-habeas circumstances in *Niles* are irrelevant to the question presented here.

2. Petitioners also challenge (Pet. 19-24) the court of appeals' holding that the Double Jeopardy Clause bars retrying respondent for manslaughter because the trial court acquitted him of that offense at his first trial. Petitioners' fact-bound contention lacks merit, and no further review of the court of appeals' unpublished decision is warranted.

The Double Jeopardy Clause ensures that "once a person has been acquitted of an offense he cannot be prosecuted again on the same charge." *Green* v. *United States*, 355 U.S. 184, 192 (1957). As this Court explained in *Evans* v. *Michigan*, 568 U.S. 313 (2013), an "acquittal" is defined broadly in the double-jeopardy context "to encompass *any* ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." *Id.* at 318 (emphasis added). Unlike "[p]rocedural dismissals * * * unrelated to factual guilt or innocence," those "substantive rulings" are "merits-related" and thus serve to "conclude[] proceedings absolutely" against a person on a given offense. *Id.* at 319.

In the decision below, the court of appeals correctly identified *Evans* as stating the relevant legal rule, see Pet. App. 4, and properly applied that rule to the particular circumstances of this case. The court of appeals analyzed the trial court's colloquy with counsel at respondent's first trial and observed that the trial court had "explicitly stated that there was no evidence in the record to support instructing the jury on manslaughter." *Id.* at 4-5. As the court of appeals correctly explained, Hawaii law "requires trial courts to instruct juries on any lesser-included offense that has 'a rational basis in the evidence,' regardless of whether 'the prosecution requests, or the defense objects to, such an instruction.'" *Id.* at 5. (quoting

State v. *Adviento*, 319 P.3d 1131, 1148 (Haw. 2014)). Because "manslaughter is a lesser-included offense of second-degree murder," the trial court's finding that "there was no evidence to support a manslaughter instruction" when "refusing to instruct the jury on manslaughter" was necessarily a "determinat[ion] that the State's proof was insufficient to establish [respondent's] criminal liability for that offense." *Ibid.*; see *Evans*, 568 U.S. at 318.

Petitioners nevertheless contend (Pet. 22) that the trial court's ruling could not have been an acquittal because it was "unsolicited" and not in response to a "motion or request" for acquittal from respondent. In the double-jeopardy context, however, the relevant question is "whether the ruling of the judge, *whatever its label*, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." *United States* v. *Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977) (emphasis added). Thus, it is "the substance of a court's decision" that "control[s]." *Evans*, 568 U.S. at 322. For the reasons explained above, the substance of the trial court's ruling was that the prosecution had failed to introduce sufficient proof of manslaughter. The court of appeals was thus correct that "[i]t does not matter that the trial court did not label the ruling an 'acquittal.'" Pet. App. 5.

Petitioners invoke (Pet. 22-23) this Court's characterization, in *Beck* v. *Alabama*, 447 U.S. 625 (1980), of the requirement that a jury in a capital case be instructed on lesser-included offenses that are supported by the evidence as a "procedural safeguard." *Id.* at 637. But that characterization has no logical bearing on the double-jeopardy issue presented here. A defendant's entitlement to a lesser-included-offense instruction is a procedural safeguard because

it avoids presenting the jury with an all-or-nothing choice that "create[s] the risk of an unwarranted conviction." *California* v. *Ramos*, 463 U.S. 992, 1007 (1983). In this case, by contrast, the trial court *declined* to instruct the jury on the lesser-included offense of manslaughter because it concluded that the prosecution's evidence did not support that charge. That was a substantive ruling on the adequacy of the prosecution's proof and therefore constitutes an acquittal for double-jeopardy purposes.

Petitioners also appear to contend (Pet. 23-24) that the trial court's ruling was not an acquittal for double-jeopardy purposes because the trial court erred in concluding at respondent's first trial that there was insufficient evidence to instruct the jury on manslaughter. Petitioners observe that, under Haw. Rev. Stat. § 702-208, evidence of intentional or knowing conduct is legally sufficient to establish a reckless state of mind. Notwithstanding that statute, however, the Hawaii Supreme Court has held that trial evidence can fail to "provide a rational basis for a verdict acquitting [defendant] of murder in the second degree and instead finding him guilty of * * * manslaughter." *State* v. *Austin*, 422 P.3d 18, 39 (Haw. 2018). Moreover, even if petitioners were correct that the trial court's ruling was mistaken, that would be irrelevant for double-jeopardy purposes, as the court of appeals correctly held. See Pet. App. 5. "[T]he fact that the acquittal may result from * * * erroneous interpretations of governing legal principles * * * does not alter its essential character." *Evans*, 568 U.S. at 318 (quoting *United States* v. *Scott*, 437 U.S. 82, 98 (1978)); see also *Martin Linen*, 430 U.S. at 571.

In any event, petitioners do not argue that the court of appeals' resolution of respondent's double-

jeopardy claim conflicts with a decision of any other court, or even that the decision implicates any legal issue of general applicability. Instead, petitioners challenge only the court of appeals' application of a properly stated legal rule to the particular circumstances of this case, including the trial court's colloquy with counsel at respondent's first trial and Hawaii's relevant substantive and procedural law. Petitioners' fact-bound disagreement with the court of appeals' non-precedential decision merits no further review. See Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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