No. 19-125

In The Supreme Court of the United States

GALE ZAMORE,

Petitioner,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, INDIVIDUALLY AND AS TRUSTEE FOR JP MORGAN MORTGAGE ACQUISITION TRUST 2007-CH5 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2007-CH5,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

As this Court held in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005), the *Rooker-Feldman* doctrine precludes lower federal courts from exercising subject matter jurisdiction over "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." Expressly relying on *Exxon Mobil* (Pet. App. 4a, 6a), the Eleventh Circuit's unpublished, per curiam decision dismissed petitioner's federal-court action on the sole ground that it was barred under *Rooker-Feldman*. The panel's decision did not address either of the district court's two alternative, independent grounds for dismissal—res judicata and statute of limitations.

The questions presented are:

1. Whether the Eleventh Circuit correctly held that the district court lacked subject matter jurisdiction under *Rooker-Feldman* where the petitioner's federal-court action would effectively nullify the prior state-court judgment.

2. Whether this Court should review in the first instance either of the district court's two alternative, independent grounds for dismissal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Deutsche Bank National Trust Company is a wholly owned subsidiary of Deutsche Bank Holdings, Inc., a corporation organized under the laws of the State of Delaware. Deutsche Bank Holdings, Inc. is a wholly owned subsidiary of Deutsche Bank Trust Corporation, a corporation organized under the laws of the State of New York. Deutsche Bank Trust Corporation is a wholly owned subsidiary of DB USA Corporation, a corporation organized under the laws of the State of Delaware. DB USA Corporation is a wholly owned subsidiary of Deutsche Bank AG, a banking corporation organized under the laws of the Federal Republic of Germany. No publicly-held company owns 10% or more of Deutsche Bank AG's stock.

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INTRODUCTION

In this follow-on federal action, petitioner seeks to undo, through a declaration of rescission, a prior, final state-court foreclosure judgment against her. Thus, applying *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), to the facts of this case, the Eleventh Circuit's unpublished, per curiam decision affirmed the dismissal of petitioner's complaint for lack of subject matter jurisdiction under *Rooker-Feldman*. That straightforward, fact-bound decision was correct, in accordance with this Court's precedent and that of other circuits, and there is no reason for the Court to review it. Nor is there any reason for the Court to review—in the first instance—either of the district court's two independent, alternative grounds for dismissal, namely, that petitioner's action was barred under both res judicata and the governing statute of limitations.

Undeterred, petitioner attempts to frame this case as one concerning "lower court defiance" of this Court's precedent on the three questions she presents, which, she continues, is "particularly manifest in the Eleventh Circuit." Pet. 10; *see id.* i, 4. But petitioner provides no support for that—indeed, she hardly discusses *any* Eleventh Circuit precedent, let alone cites any cases supporting her dramatic claim. That is with good reason. There is no support, as the petition itself demonstrates.

As for petitioner's primary question presented, concerning the *Rooker-Feldman* doctrine, her central

premise is largely detached from this particular case. She claims that the Eleventh Circuit has been "ignor[ing]" (Pet. i) or "def[ying]" (Pet. 4) this Court's decision in *Exxon Mobil*, a case that clarified the scope of *Rooker-Feldman*. Even if that were true—and it is not—it would provide no reason for the Court's review here because the Eleventh Circuit in this case expressly relied on *Exxon Mobil*, as petitioner concedes. But in any event the premise is incorrect, easily defeated by the plain language of the Eleventh Circuit's own precedent since *Exxon Mobil*.

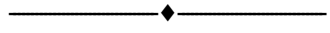
Petitioner relatedly claims that Eleventh Circuit law conflicts with how other circuits have applied *Rooker-Feldman* since *Exxon Mobil*, citing case law from eight other circuits. That claim is also irrelevant here and wrong. Not one of those decisions suggests that there is any division of authority concerning *Exxon Mobil*—let alone that the Eleventh Circuit is out of step with any other circuit. Indeed, far from presenting any conflict, this collection of case law shows that federal courts of appeals have consistently applied *Exxon Mobil*.

Thus, at bottom, petitioner seeks fact-bound error correction. That is a reason to deny review; moreover, there is nothing to correct because the Eleventh Circuit correctly applied *Exxon Mobil*. Here, petitioner sought, through her follow-on federal action, to undo—or, in the Eleventh Circuit's words, "'effectively nullify'" (Pet. App. 4a)—a prior state-court foreclosure judgment. That is precisely what *Rooker-Feldman* proscribes. Underscoring the point, the Third and Seventh

Circuits—two circuits that *petitioner* invokes as examples of the *correct* application of *Exxon Mobil*—have reached the very same conclusion in decisions petitioner does not mention.

Finally, as for petitioner's two subsidiary questions presented, concerning res judicata and the statute of limitations, neither should detain the Court long. She buries in a footnote her concession that neither issue was addressed by the Eleventh Circuit, and that alone is sufficient reason to deny review. Moreover, both are alternative, independent grounds for affirmance, and neither presents any legal question of consequence in this case.

Accordingly, the petition for a writ of certiorari should be denied.



STATEMENT OF THE CASE

This follow-on federal action, filed in 2017, arises out of petitioner Gale Zamore's default on a mortgage refinance loan and the resulting final state-court foreclosure judgment in 2013. The central events took place long ago.

A. Prior State Court Proceedings

Over twelve years ago, in January 2007, petitioner entered into a mortgage refinance loan of $246,000, secured against her residence in Palm Beach County, Florida. Pet. App. 2a. She eventually defaulted on her

loan obligations. Thus, in August 2009, respondent Deutsche Bank National Trust Company (the Bank) filed a mortgage foreclosure action in Florida state court. *Id.* About two months later, in October, petitioner responded to that foreclosure action by, among other things, sending the Bank a written notice—which she then filed in the foreclosure action—claiming she had a right to rescind the mortgage under the Truth in Lending Act. *Id.* 2a–3a. Petitioner invoked an extended right of rescission based on the alleged failure to provide certain disclosures at the loan closing, more than two years earlier. *See* Dist. Ct. Dkt. 1, at ¶¶ 26–30.

The state trial court entered its final foreclosure judgment on May 23, 2013. Pet. App. 3a. Petitioner moved to vacate the judgment, again raising the issue of rescission, but her motion was denied. *Id.* She then appealed, but again without success. The Fourth District Court of Appeal affirmed. *See Zamore v. Deutsche Bank Nat'l Trust Co.*, 2016 WL 1614392 (Fla. Dist. Ct. App. Apr. 21, 2016); *see also* Pet. App. 13a.[1]

B. District Court Proceedings

Subsequently, on March 3, 2017, petitioner filed this federal action in the Southern District of Florida. *See* Pet. App. 9a–11a. The plain purpose of this lawsuit,

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[1] Zamore filed a separate state-court quiet-title action, yet again invoking her purported TILA rescission, in July 2014. Pet. App. 13a–14a. The state court dismissed that action in October 2015, and that dismissal was also affirmed on appeal. *Id.*

as both the district court and Eleventh Circuit recognized, was "to challenge the validity of the [prior state-court] foreclosure proceedings." *Id.* 10a; *see* Pet. App. 5a.

Petitioner sought a declaratory judgment that—contrary to the final foreclosure judgment—her mortgage loan had been rescinded under the Truth in Lending Act (TILA), 15 U.S.C. § 1635. Pet. App. 8a. Thus, she claimed that the "state foreclosure proceeding" was "unlawful[ ]," "result[ing] in an irregular and wrongful forced foreclosure sale and writ of possession." Dist. Ct. Dkt. 1, at ¶¶ 4, 65; *see* Pet. App. 10a–11a (describing complaint). Indeed, as petitioner herself has described it, her complaint "'seeks to set aside, invalidate, or challenge the Final Judgment of Foreclosure entered on May 29, 2013.'" Pet. App. 11a.[2]

The Bank moved to dismiss the complaint on three independent grounds. Pet. App. 8a. First, the Bank argued, the district court lacked subject matter jurisdiction under this Court's *Rooker-Feldman* doctrine. Second, the Bank further argued, the action was barred by res judicata. Third and finally, the action was time-barred.

The district court agreed on all three grounds. Pet. App. 22a. After describing the complaint and the

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[2] In her complaint, Zamore also brought a separate claim for damages (Count II), but she abandoned that claim on appeal and it is not at issue here. *See* Pet. 7 ("Zamore did not seeking [sic] review of the dismissal of Count II."); Pet. 8 ("Zamore filed her notice of appeal seeking review only of the dismissal of Count I.").

relevant procedural history in detail, the court found that the "purpose of this case is to challenge the validity of the foreclosure proceedings, including the Final Judgment." *Id.* 10a. But the *Rooker-Feldman* doctrine proscribes just that. As the district court explained, this Court "has made clear that federal courts are not empowered to overrule legitimate decisions made by state courts." *Id.* 14a. Thus, the court lacked subject matter jurisdiction.

Moreover, the district court continued, "even if th[e] [c]ourt had jurisdiction . . . , there are two other reasons why the Complaint . . . should be dismissed." Pet. App. 16a. First, the action was barred by res judicata. *Id.* 18a–19a. In fact, as the district court explained, "this action attempts to invalidate the same Mortgage and Final Judgment that were the subject of the prior Foreclosure Action." *Id.* 19a. Independently, the action was also time-barred under the applicable statute of limitations. *Id.* 20a–22a. Concerning the latter reason for dismissal, petitioner argued against *any* statute of limitations; in her view, all she needed to do was send her rescission notice within three years (which she allegedly did), and then she could file a lawsuit anytime thereafter. *See* Dist. Ct. Dkt. 12, at 9. The district court disagreed. Relying on its own prior case law and other case law in accord, the court concluded that a one-year limitations period applied under 15 U.S.C. § 1640—running from the date the Bank allegedly failed to respond to petitioner's notice of rescission, *i.e.*, running from November 11, 2009 until November 11, 2010. Pet. App. 21a. Because she did not

file suit until March 2017—more than six years past her deadline—her action was time-barred. *Id.*

C. Eleventh Circuit Proceedings

In an unpublished, per curiam decision, the Eleventh Circuit affirmed based solely on the *Rooker-Feldman* doctrine. Pet. App. 2a. As the decision made clear—and as petitioner concedes—the court of appeals "d[id] not address" either of "the district court's alternative grounds for dismissal," namely, res judicata and statute of limitations. *Id.* 6a; *accord* Pet. 12 n.2, 13 n.3.

Petitioner insists (*e.g.*, Pet. i) that the Eleventh Circuit has "ignore[d]" this Court's decision in *Exxon Mobil*, which clarified the scope of the *Rooker-Feldman* doctrine. In fact, the court of appeals began and ended its analysis with *Exxon Mobil* itself. Quoting from and applying that very precedent, the court of appeals explained that *Rooker-Feldman* is confined to "'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.'" Pet. App. 4a (quoting *Exxon Mobil*, 544 U.S. at 284); *see id.* 6a (quoting *Exxon Mobil*, 544 U.S. at 284). *Rooker-Feldman*, the court continued, is thus a "narrow doctrine." Pet. App. 4a. Nonetheless, "'a state court loser cannot avoid *Rooker-Feldman*'s bar by cleverly cloaking her pleadings in the cloth of a different claim.'" *Id.* Thus, the court of appeals explained, *Rooker-Feldman*'s

bar applies where a federal claim "'would effectively nullify the state court judgment'"—*i.e.*, where the federal claim is "'inextricably intertwined' with the state court's judgment." *Id.*

The Eleventh Circuit then held that petitioner's complaint was barred by *Rooker-Feldman*. "The foreclosure judgment recognized that Zamore's debt to Deutsche Bank was valid and that Deutsche Bank was entitled to foreclose the property in question." Pet. App. 5a. "Granting Zamore's current request for declaratory relief, in the form of an order stating that her mortgage loan was rescinded as of 2009, 'would effectively nullify the state court judgment' granting foreclosure based on the validity of the debt." *Id.* Thus, the court concluded: "Zamore's current claim, however phrased, is 'inextricably intertwined' with the state court's judgment." *Id.* 6a.

Petitioner did not seek panel rehearing or rehearing en banc.

REASONS FOR DENYING THE PETITION

I. Petitioner's First Question Presented, Concerning the *Rooker-Feldman* Doctrine, Does Not Warrant Review.

A. Petitioner's *Rooker-Feldman* Question Rests on an Incorrect Premise.

The central premise of the petition is that the Eleventh Circuit has been "ignor[ing]" or "def[ying]"

this Court's decision in *Exxon Mobil* and instead "apply[ing] its own now discarded standard in *Amos v. Glynn County Board of Tax Assessors*, 347 F.3d 1249 (11th Cir. 2003)." Pet. i, 4; *see id.* 8–12. Even if that were true—and it is not—it would provide no reason for the Court's review because the Eleventh Circuit in this case expressly relied on and correctly applied *Exxon Mobil*. But, as described below, the premise itself is incorrect.

1. Eleventh Circuit precedent accords with this Court's *Rooker-Feldman* precedent.

The *Rooker-Feldman* doctrine takes its name from two cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). It stands for this settled proposition: Under 28 U.S.C. § 1257(a), only this Court has subject matter jurisdiction to review final state-court judgments, and therefore lower federal courts lack subject matter jurisdiction to effectively act as reviewing courts of state-court judgments. *See*, *e.g.*, *Exxon Mobil*, 544 U.S. at 283–288. In short, as the Eleventh Circuit stated here, *Rooker-Feldman* prevents lower "federal courts from reviewing final state-court decisions." Pet. App. 2a.

In 2005, two decades after it decided *Feldman*, the Court revisited the doctrine in *Exxon Mobil*. As the Court explained, "[v]ariously interpreted in the lower courts, the doctrine has sometimes been construed to

extend far beyond the contours of the *Rooker* and *Feldman* cases." *Exxon Mobil*, 544 U.S. at 283. Thus, the Court stepped in and clarified "the narrow ground occupied by *Rooker-Feldman*." *Id.* at 284.

The *Rooker* and *Feldman* cases, the Court explained in *Exxon Mobil*, "essentially invited federal courts of first instance to review and reverse unfavorable state-court judgments." 544 U.S. at 283. The Court then held that "[t]he *Rooker-Feldman* doctrine . . . 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." *Id.* at 283–284.

While demonstrating the "limited circumstances" in which the doctrine applies, 544 U.S. at 290, *Exxon Mobil* also underscored that the doctrine cannot be evaded through artful pleading. Hence, the doctrine looks beyond the particular form of the plaintiff's federal-court claim to the substantive source of a plaintiff's purported injury. *See id.* at 284, 286 n.1, 291–294. Related, the doctrine can apply regardless of whether the state court "passed directly" on the federal-court claim, a category of claims the Court in *Feldman* referred to as " 'inextricably intertwined' " with the state-court judgment. *Id.* at 286 n.1. The question, then, is whether the federal action would require, expressly or effectively, lower federal courts to "reject[ ]" or "undo" final state-court judgments. *Id.* at 284, 291–294; *see Feldman*, 460 U.S. at 462 n.16 ("[T]he district court is

in essence being called upon to review the state-court decision. This the district court may not do."). *Exxon Mobil* noted that a party may bring an " 'independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party,' " but only as long as such claim would not invite federal court "review and rejection" of the state-court judgment. *Id.* at 293.[3]

The Court has since reaffirmed and applied *Exxon Mobil*'s standard in two more recent cases, *Lance v. Dennis*, 546 U.S. 469, 464–467 (2006), and *Skinner v. Switzer*, 562 U.S. 521, 531–533 (2011).

Contrary to what petitioner contends (Pet. i, 4, 8, 10–12), Eleventh Circuit precedent is squarely in accord with *Exxon Mobil*. Thus, for example, in *Nicholson v. Shafe*, 558 F.3d 1266 (11th Cir. 2009), the court discussed *Rooker*, *Feldman*, and *Exxon Mobil* in detail. In so doing, it underscored that this Court in *Exxon Mobil* "had limited the *Rooker-Feldman* doctrine to its roots—the unique facts of the *Rooker* and *Feldman* cases." *Nicholson*, 558 F.3d at 1274–1275; *see also id.* at 1279 (explaining how "a unanimous Supreme Court warned the lower courts that we have extended *Rooker-Feldman* 'far beyond the contours of the *Rooker* and *Feldman* cases,' " and explaining how its decision "heeds that warning"); *see also*, *e.g.*, *Alvarez v. Att'y*

[3] After clarifying the legal standard, the Court in *Exxon Mobil* concluded that *Rooker-Feldman* did not apply based on circumstances that have no bearing here. Specifically, the result in that case turned on the fact that the federal action was filed while the state case was still pending. 544 U.S. at 289–294.

Gen. for Fla., 679 F.3d 1257, 1264 (11th Cir. 2012) (holding that plaintiff's "claim meets all of the criteria for application of the *Rooker-Feldman* doctrine as they have been recently articulated by the Supreme Court in *Exxon Mobil*").

Petitioner nonetheless declares that "the Eleventh Circuit continues—defiantly—to deny jurisdiction based on" its earlier decision in *Amos*. Pet. 10. But *Nicholson* itself, which petitioner does not cite—indeed, she cites *no* Eleventh Circuit precedent postdating *Exxon Mobil*—easily deflates this argument. There, the court expressly stated: "Rather than apply *Amos*, we adhere to *Exxon Mobil*, delineating the boundaries of the *Rooker-Feldman* doctrine." 544 F.3d at 1274; *see also Kelly v. Ala. Dept. of Revenue*, 638 Fed. Appx. 884, 889 (11th Cir. 2016) (recognizing that *Amos* was "abrogated" by *Exxon Mobil*).

More recently, in *Target Media Partners v. Specialty Marketing Corp.*, 881 F.3d 1279 (11th Cir. 2018), also not cited in the petition, the Eleventh Circuit again discussed the scope of *Rooker-Feldman* at length. There, after a party prevailed in state court on claims for breach of contract and fraud, the party issued statements that summarized the conduct that had been found to be fraudulent. *Id.* at 1281–1282. Based on those statements, the unsuccessful state-court litigant brought suit in federal court for defamation. *Id.* The district court dismissed the defamation claim on *Rooker-Feldman* grounds, concluding that the claims were "inextricably intertwined" with the state-court decision because any finding that the statements were

false and defamatory "would have the material effect of nullifying the state court judgment." *Id.* at 1283–1284.

Following the standard set forth in *Exxon Mobil*, the court in *Target Media* reversed and held that *Rooker-Feldman* did not apply in that case because "the injury complained of in the defamation action was not caused by the Alabama state court judgment." *Id.* at 1289. In addition, *Rooker-Feldman* did not apply because the defamation action "does not invite the review and rejection of the Alabama state court judgment." *Id.* at 1286. As the Eleventh Circuit again explained, "the Supreme Court clarified [in *Exxon Mobil*] that *Rooker-Feldman* bars only that class of cases in which federal litigants seek reversal of state court decisions." *Id.* "Finding a claim to be barred by *Rooker-Feldman* requires that it amount to a direct attack on the underlying state court decision." *Id.* at 1289. "It is not the factual background of a case but the judgment rendered . . . that must be under direct attack." *Id.* at 1287.

In short, in the fourteen years since *Exxon Mobil* was decided, Eleventh Circuit precedent has carefully considered the distinction identified in *Exxon Mobil* between (1) claims that invite the district court to "reject[]" or "undo" the prior state-court judgment, even if the claims were not litigated in state court—*i.e.*, in *Feldman*'s terms, claims that are "inextricably intertwined" with the state-court judgment, and (2) "independent" claims that may involve the same factual issues but do not require "review and rejection" of the

state-court judgment. *See*, *e.g.*, *Target Media*, 881 F.3d 1279.

2. There is no circuit conflict.

Petitioner also contends that the Eleventh Circuit's post-*Exxon Mobil* precedent—again, without citing any—is in conflict with the "majority" of other circuits, citing cases from the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits. Pet. 9–11. For similar reasons to those just discussed, that too is incorrect. There is no conflict.

Petitioner's own cases, cited in passing without discussion, refute her claim. Far from demonstrating a conflict, they illustrate the broad consensus among the circuits, including the Eleventh, on *Rooker-Feldman*'s scope after *Exxon Mobil*. Indeed, petitioner cites no case (or any other authority) that even suggests that the Eleventh Circuit has charted its own course when applying *Rooker-Feldman* or failed to follow *Exxon Mobil*.

Second Circuit. In *Hoblock v. Albany County Board of Elections*, 422 F.3d 77, 82 (2d Cir. 2005), *cited at* Pet. 10, the court considered a federal civil rights action challenging a county board's refusal to count absentee ballots after the state court had already ruled which ballots were valid. Relying on the *Exxon Mobil* standard—the same standard the Eleventh Circuit has repeatedly applied (*see supra* § I.A.1.), the court concluded that three of the four requirements to apply *Rooker-Feldman* were met, but it remanded the case to

the district court to determine if "the parties in the state and federal suits" were "the same." *Id*. at 89, 92.

In its analysis, *Hoblock* explained that the "key" or "core" substantive requirement for the analysis is that federal suits are barred by *Rooker-Feldman* only when plaintiffs "complain of an injury caused by a state judgment." *Id.* at 87. That focus on whether the injury is caused by the state-court judgment is fully consistent with Eleventh Circuit precedent. *See*, *e.g.*, *Target Media*, 881 F.3d at 1289. Moreover, *Hoblock* underscored the focus on the substance, not form, of the plaintiff's claim. "Just presenting in federal court a legal theory not raised in state court," *Hoblock* explained, "cannot insulate a federal plaintiff's suit from *Rooker-Feldman* if the federal suit nonetheless complains of injury from a state-court judgment and seeks to have that state-court judgment reversed." 422 F.3d at 86. "*Feldman* itself makes this plain." *Id.* This same focus aligns closely with Eleventh Circuit precedent.

Third Circuit. In *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 173 (3d Cir. 2010), *cited at* Pet. 10, the court held that a federal civil rights action alleging a conspiracy among members of the state judiciary was not barred under *Rooker-Feldman* because it was independent of the state-court judgment affirming an arbitration award, particularly when the injury arose from the defendants' actions and not the state-court judgment. The court found that the "critical question" there turned on the same language from *Exxon Mobil* that the Eleventh Circuit applies—that the federal suit is "inviting

district court review and rejection" of a state-court judgment. *Id*. at 171.

Fourth Circuit. *Davani v. Virginia Department of Transportation*, 434 F.3d 712, 719 (4th Cir. 2006), *cited at* Pet. 10, concerned an employee's federal action alleging discrimination after a state court affirmed only a state agency's grievance procedure. The court determined that because the federal suit did not seek redress for an injury caused by the state suit—the affirming of the agency's grievance ruling—it was not barred by *Rooker-Feldman*. *Id.* Again, the focus on the injury caused by the state-court judgment aligns with Eleventh Circuit precedent.

Fifth Circuit. In *Houston v. Venneta Queen*, 606 Fed. Appx. 725, 730 (5th Cir. 2015), *cited at* Pet. 10, the court affirmed the dismissal of a federal action seeking injunctive and declaratory relief because, "[a]lthough [plaintiffs] assert claims of harm ostensibly separate from the judgment of possession—*e.g.*, fraud and violation of due process—they seek only declaratory and injunctive relief relating to the state-court judgment, not damages from these purportedly independent wrongs." Once again, as in the Eleventh Circuit, the court focused on the injury caused by the state-court judgment.[4]

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[4] Not only does the Eleventh Circuit conduct the same analysis into the cause of the plaintiff's injury, but the Eleventh Circuit has also identified the same distinction as in *Houston* and other Fifth (and Sixth) Circuit decisions—between actions for "declaratory and injunctive relief relating to the state-court judgment," which are generally barred by *Rooker-Feldman*, and actions for

Sixth Circuit. *McCormick v. Braverman*, 451 F.3d 382, 386–388 (6th Cir. 2006), *cited at* Pet. 10, illustrates a case in which the court found that certain claims were barred by *Rooker-Feldman* and others were not. The court concluded that a federal action alleging fraud by certain parties to state-court proceedings were independent of the state-court judgment, but that other claims were not because they alleged that the state-court order was illegal. *Id*. at 392–393, 395. In making this distinction, the court stated, consistent with Eleventh Circuit precedent, that the "key point" is whether the state-court decision was the "source of the injury." *Id.* at 393–394.

Seventh Circuit. *Iqbal v. Patel*, 780 F.3d 728, 729 (7th Cir. 2015), *cited at* Pet. 9, presents another similar fact pattern in which a plaintiff brought a federal claim for damages to recover for injuries caused by the defendants' alleged fraud and racketeering. Finding the district court had jurisdiction, the court focused on the source of the injury, explaining that the alleged

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"damages," which are generally not barred as long as the damages are caused by the defendant's underlying conduct. *See*, *e.g.*, *Kohler v. Garlets*, 578 Fed. Appx. 862, 864 (11th Cir. 2014) (holding that declaratory judgment claims were barred by *Rooker-Feldman* to the extent plaintiff "claims that he was injured by the state court's foreclosure order and seeks 'a determination as to the title and rights and interests' of the foreclosed-upon property," but contrasting those claims with "an independent damages claim . . . based on defendants' alleged misconduct during the state court foreclosure proceedings," which would not be barred by *Rooker-Feldman*) (citing *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 383 (5th Cir. 2013); *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006)).

damages were caused by the defendants' conduct rather than the state-court judgment. *Id.* at 730.

Ninth Circuit. In *Manufactured Home Communities Inc. v. City of San Jose*, 420 F.3d 1022 (9th Cir. 2005), *cited at* Pet. 10, a landlord brought suit in federal court to challenge the constitutionality of a city rent-control ordinance after a state court had affirmed a hearing officer's interpretation of the ordinance. The court concluded that the constitutional claim was independent because it did not "directly challenge a state court's factual or legal conclusions." *Id.* at 1030.

Tenth Circuit. In *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129, 1141 (10th Cir. 2006), *cited at* Pet. 10, a plaintiff brought a federal civil rights case alleging that he was retaliated against because he challenged a city's attempt to demolish his property. The court recognized the basic principle that if a "favorable resolution of a claim" in federal court would "upset [a state-court] judgment, then the claim is *Rooker*-barred." *Id.* at 1140. But because the plaintiff did not need to overturn the state-court decision and "can be content" to let it "stand," the federal claim was not barred. *Id.* at 1145.

* * *

The cases on which petitioner relies show that the courts of appeals have carefully considered *Rooker-Feldman*'s application post-*Exxon Mobil* in a variety of different settings. Each of the circuits, including the Eleventh Circuit, applies the standard set forth in *Exxon Mobil*. Not one of petitioner's cases refers to any split of authority in applying *Exxon Mobil*—let alone

that the Eleventh Circuit is at odds with any other court of appeals.

Ultimately, even though the courts may phrase their analysis in slightly different ways, two core, consistent principles emerge from this case law, drawing directly from *Exxon Mobil*. First, courts look to whether the state-court judgment is the "source" of the injury asserted in federal court. *See*, *e.g.*, *Great W. Mining & Mineral*, 615 F.3d at 166–167 ("The second requirement—that a plaintiff must be complaining of injuries caused by a state-court judgment—may also be thought of as an inquiry into the source of the plaintiff's injury."). As discussed above, Eleventh Circuit precedent does the same. Second, courts ask if the relief sought in federal court would result in it "rejecting" or "undoing" the state-court judgment. *See*, *e.g.*, *Bolden*, 441 F.3d 1129 (court asks if federal suit would "upset" the state-court judgment). Again, the Eleventh Circuit does the same.

B. The Eleventh Circuit's Decision Was Correct.

1. The complaint sought to invalidate the foreclosure judgment.

Relying on *Exxon Mobil*, and consistent with the Eleventh Circuit and other circuit precedent discussed above, the decision below correctly concluded that petitioner's suit was barred under *Rooker-Feldman*. At best for petitioner, she is seeking error correction based on the purported misapplication of a properly stated

rule of law. That does not warrant this Court's review. *See*, *e.g.*, S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). Moreover, there is no error to correct.

As the court of appeals stated, *Rooker-Feldman* "applies to 'cases [1] brought by state-court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the district court proceedings commenced and [4] inviting district court review and rejection of those judgments." Pet. App. 4a (quoting *Exxon Mobil*, 544 U.S. at 284). Each of these four prongs is readily satisfied.

First, petitioner was a state-court loser. Second, she is complaining of injuries caused by a state-court judgment, namely, the allegedly "wrongful forced foreclosure sale and writ of possession" ordered by the state-court foreclosure judgment. Dist. Ct. Dkt. 1, at ¶¶ 4, 65; *see* Pet. App. 10a–11a (describing complaint). Third, the state-court judgment was rendered before the district court case was filed. Fourth, petitioner was inviting the district court to review and reject the mortgage foreclosure judgment through a declaration that the underlying mortgage was rescinded in 2009. As the court of appeals concluded, granting petitioner's request "'would effectively nullify the state court judgment' granting foreclosure based on the validity of the debt." Pet. App. 5a; *see id.* 6a ("the relief Zamore did request . . . would effectively invalidate the foreclosure judgment"). Thus, under *Exxon Mobil*, the Eleventh

Circuit correctly held that petitioner's suit was barred by *Rooker-Feldman*. Pet. App. 5a.

Petitioner says little to the contrary, and what she does say lacks merit. She concedes, as she must, that the Eleventh Circuit relied on *Exxon Mobil*. Pet. 11. Moreover, she does not dispute the two procedural prongs of *Exxon Mobil*'s test—that she was a state court loser (prong one), and that the foreclosure judgment was rendered before she filed her federal action (prong three).

As for the two substantive elements, petitioner focuses principally, if not entirely, on the fourth prong of *Exxon Mobil*'s test, asserting that *Rooker-Feldman* does not apply "because her Complaint does not seek review of a state court judgment nor does it invite the federal court to overrule said judgment." Pet. 12. That argument fails, as the Eleventh Circuit correctly concluded. Pet. App. 6a.

Rooker-Feldman looks beyond form to substance—to the source of a plaintiff's claimed injury. *See* Pet. App. 6a; *see supra* § I.A. As the Eleventh Circuit recognized, "'a state court loser cannot avoid *Rooker-Feldman*'s bar by cleverly cloaking her pleadings in the cloth of a different claim.'" Pet. App. 4a. Petitioner's own case law is in accord. *See Hoblock*, 422 F.3d at 88 (a plaintiff "surely" cannot "avoid *Rooker-Feldman* simply by clever pleading"), *cited at* Pet. 10.

Here, the Eleventh Circuit looked beyond the form of petitioner's pleading to the substance of her purported injury. The state court's judgment held that the

mortgage was valid and enforceable and entered a final judgment foreclosing and extinguishing that mortgage, which caused petitioner to lose possession of her property—the precise injury she seeks to redress in federal court. Indeed, petitioner herself has represented that her federal action sought to "'*set aside, invalidate, or challenge* the Final Judgment of Foreclosure entered on May 29, 2013.'" Pet. App. 11a (emphasis added).

The Eleventh Circuit thus correctly held that the relief petitioner sought—a declaration that her mortgage loan had been rescinded—would "effectively invalidate the foreclosure judgment." Pet. App. 6a. Indeed, if the declaration did not have that effect, then there would have been no purpose for this action at all. Petitioner does not claim, for example, that she needs the declaration to eliminate a financial obligation to pay the mortgage, as such obligation has long been extinguished. Rather, petitioner's injury is losing possession of her property based on the state court's judgment, which she seeks to remedy through a declaration that would have the legal effect of negating that same judgment and restoring her possession of the property. *See* Pet. App. 6a.[5]

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[5] As a matter of Florida law, when a mortgage is foreclosed it merges into the final judgment, making it impossible for a court to adjudicate the legal effect of the mortgage without first vacating the final judgment. *See U.S. Bank Nat'l Assoc. v. Larsen*, 736 Fed. Appx. 775, 777 (11th Cir. 2018) (applying Florida law, "[a]fter a foreclosure, . . . '[t]he mortgage is merged into the judgment, is thereby extinguished, and loses its identity.' Once a mortgage has merged into a judgment, no further action can be

Petitioner presses on, but she raises only minor squabbles. Petitioner faults the Eleventh Circuit for using the phrase "inextricably intertwined." Pet. 11. That is meritless. The term came from *Feldman* itself (*supra* § I.A.1.); petitioner's own cases use it, as the petition shows (*see* Pet. 9–10); and it is merely shorthand for the types of claims that are subject to *Rooker-Feldman*, as the decision here makes clear (*see* Pet. App. 6a). Petitioner also faults the Eleventh Circuit for considering whether she "had an 'opportunity to raise [her] claim' in the state court." Pet. 11. That too is meritless. As the decision again makes clear, that discussion was in response to petitioner's argument that her TILA claim was "not raised or decided in the state foreclosure proceeding." Pet. App. 5a.[6]

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taken on the mortgage unless the foreclosure judgment is vacated." (alteration in original; internal citation omitted)); Pet. App. 9a–10a. That is what petitioner's federal action would require, and what *Rooker-Feldman* bars.

[6] The Eleventh Circuit noted earlier in its decision that *Rooker-Feldman* "does not apply . . . where a party did not have a 'reasonable opportunity' to raise her claim in the state proceeding." Pet. App. 5a. But, by its plain terms, that rule provides a possible exception to *Rooker-Feldman—i.e.*, a basis under which a court should *not* apply *Rooker-Feldman* to bar a lawsuit. Thus, it is no surprise that petitioner does not challenge it in her petition.

2. The Eleventh Circuit's decision is consistent with every other circuit to have addressed this same issue.

The Eleventh Circuit is not the only circuit to have addressed this same issue, and those that have done so—the Third and Seventh Circuits—have reached the same conclusion. Notably, petitioner relies on the Third and Seventh Circuits as evidence of some supposed conflict with the Eleventh on *Rooker-Feldman*. *See supra* § I.A.2. Not only is that incorrect generally, as discussed above, but it is refuted in the specific context here concerning TILA rescission.

For instance, in *In re Madera*, 586 F.3d 228 (3d Cir. 2009), the Third Circuit held that a federal claim for TILA rescission, filed after a state-court foreclosure judgment, was barred under *Rooker-Feldman*. Just as the Eleventh Circuit held here, the Third Circuit held that "granting rescission would amount to a finding that no valid mortgage existed, which would negate the foreclosure judgment, as a 'mortgage action depends upon the existence of a valid mortgage.'" *Id.* at 232 (further explaining that "a favorable decision . . . would prevent the [state court] from enforcing its order to foreclose the mortgage").

The Seventh Circuit reached the same conclusion when holding that a TILA rescission claim was barred by *Rooker-Feldman*. In *Mains v. Citibank, N.A.*, 852 F.3d 669 (7th Cir. 2017), the court held: "Insofar as Mains alleges he had the right to rescind [the mortgage under TILA], he . . . runs into *Rooker-Feldman*.

The existence of such a right is possible only if the state court's prior foreclosure judgment is set aside." *Id.* at 677. The court then reaffirmed the point in *Fendon v. Bank of America, N.A.*, 877 F.3d 714, 716 (7th Cir. 2017), holding again that a TILA rescission claim was barred by *Rooker-Feldman*: "By the time Fendon began this suit it was too late to unwind the transaction because the property securing the loan had been sold. Federal district courts lack authority to revise the judgments of state courts." *Id.* at 716.[7]

Thus, every circuit to have addressed this particular issue, the Third, Seventh, and now the Eleventh, has squarely held that a follow-on claim for TILA rescission, or a declaration to that effect, would effectively nullify a prior state-court judgment, and is therefore barred under *Rooker-Feldman*.

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[7] Zamore has never disputed the fact that the declaration she seeks—that the mortgage was rescinded in 2009 before the foreclosure judgment in 2013—would effectively invalidate the foreclosure judgment. Rather, as Zamore has stated, the purpose behind her federal suit is to invalidate the foreclosure judgment. *E.g.*, Pet. App. at 11a. In fact, if that is not what she is seeking, then her federal action would be moot because the underlying mortgage has already been extinguished by the final judgment. The court in *Fendon* explained just this problem. 877 F.3d at 716 (because the final judgment itself could not be disturbed by the district court, the declaration sought "would have been an advisory opinion—a legal declaration that could not affect anyone's rights"); *see also Oakville Dev. Corp. v. F.D.I.C.*, 986 F.2d 611, 613 (1st Cir. 1993) ("reversing the orders in question [which already allowed the foreclosure sale to proceed] would give [appellant] no more than a moral victory. Ergo, its appeal is moot.").

II. Petitioner's Second and Third Questions—Unaddressed by the Eleventh Circuit's Decision—Do Not Warrant Review.

Petitioner presents two subsidiary questions, neither one addressed by the Eleventh Circuit below. The first concerns the application of res judicata under Florida law to petitioner's complaint, and the second concerns the statute of limitations for a TILA rescission claim. For multiple reasons, neither warrants this Court's review.

A. Neither of These Issues Were Addressed by the Eleventh Circuit.

For starters, petitioner buries in a footnote her concession that the Eleventh Circuit did not address either question—having resolved the case on *Rooker-Feldman* grounds only. *See* Pet. 12 n.3, 13 n.3; *see also* Pet. i (referring to "the Eleventh Circuit" in question 1, but "the lower court" in questions 2 and 3). That alone is reason to deny review. *See*, *e.g.*, *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) ("Ours is 'a court of final review and not first view.' In particular, when we reverse on a threshold determination, we typically remand for resolution of any claims the lower courts' error prevented them from addressing." (internal citation omitted)). Petitioner presents no reason—and there is none—why the Court should depart from its usual practice and review the district court's alternative holdings in the first instance.

Moreover, neither question could be addressed before resolving the jurisdictional *Rooker-Feldman* question in petitioner's favor. *See*, *e.g.*, *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 93 (1998) ("'Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.'"). And even then, both res judicata and the statute of limitations present independent, alternative grounds for affirming the district court's decision. Thus, the Court could resolve the case on either alternative ground. That too is a reason to deny review. *See*, *e.g.*, Stephen M. Shapiro et al., *Supreme Court Practice* 248 (10th ed. 2013) ("If it appears that upon a grant of certiorari that the Supreme Court might be able to decide the case on another ground and thus not reach the point upon which there is a conflict, the conflict itself may not be sufficient reason for granting review.").

B. Each of These Alternative Issues Are Flawed on the Merits.

1. Res judicata

Concerning res judicata, petitioner contends in two cursory paragraphs that the district court should have applied Florida law rather than federal law. Pet. 12–13. At best, all petitioner seeks is error correction of no consequence here.

Consistent with this Court's precedent, settled Eleventh Circuit law recognizes that federal courts "must afford 'preclusive effect to a state court judgment to the

same extent as would courts of the state in which the judgment was entered.'" *Alliant Tax Credit 31, Inc. v. Murphy*, 924 F.3d 1134, 1146 (11th Cir. 2019) (applying Georgia state law to determine preclusive effect of state-court judgment entered in Georgia) (citations omitted); *see also*, *e.g.*, *Exxon Mobil*, 544 U.S. at 282 ("federal courts must 'give the same preclusive effect to a state-court judgment as another court of that State would give'"). As a result, there is no question that Florida claim-preclusion law applies here. At most, then, the issue of res judicata involves applying the particular facts of this case to settled Florida law.

Moreover, on the merits, res judicata bars this action under Florida law. As discussed, in petitioner's prior state-court proceedings, her mortgage was adjudicated to be valid and was foreclosed upon. Petitioner asserts without explanation that res judicata does not apply because she did not raise the same TILA rescission claim in the state-court action. Pet. 13. But that is irrelevant. Under Florida law, any defenses or counterclaims that could have established the invalidity of the mortgage—here, rescission under TILA—were required to be raised in the foreclosure action. *See*, *e.g.*, *Bedasee v. Franklin*, 2017 WL 519095, at *2 n.4 (M.D. Fla. Feb. 8, 2017) ("[T]o the extent Plaintiffs are claiming that the Mortgage is somehow void or invalid, those are . . . compulsory counterclaims to a foreclosure action." (citing *Tucker v. Bank of New York Mellon*, 175 So. 3d 305, 305 (Fla. Dist. Ct. 2014))).

2. Statute of limitations

Petitioner's question concerning the statute of limitations for a TILA rescission claim fares no better. To begin with, petitioner advocates a rule that "no statute of limitations can apply" to TILA rescission claims. Pet. 13. But the petition capably demonstrates the uniformity in the case law *rejecting* that extraordinary position. *See*, *e.g.*, *id.* 13 ("lower courts throughout the nation . . . impose a one-year statute of limitations"). Moreover, petitioner invokes *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259 (2015), but that decision provides her no help. *Jesinoski* addressed what a plaintiff must do to exercise her right of rescission within the three-year period set forth in 15 U.S.C. § 1635(f), and it held that a plaintiff need only send a notice of intent to seek rescission within three years. *Id.* at 792. *Jesinoski* did not address—and has no bearing on—the statute of limitations for a TILA rescission claim (assuming a valid, timely notice of rescission has been sent in accordance with § 1635(f)).[8]

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[8] Contrary to the position advanced by petitioner here, however, both the United States and the petitioner in *Jesinoski* acknowledged that a statute of limitations *would* apply to TILA rescission claims. *See* U.S. Br., *Jesinoski*, 2014 WL 3611512, at *10 (U.S. July 22, 2014) ("[T]he Court can (in accordance with its usual practice) borrow a limitations period for such suits from an analogous source of law."); Pet. Br., *Jesinoski*, 2014 WL 3539339, at *43 (U.S. July 15, 2014) ("Whether the Court borrows the relevant state-law statute of limitations, as is its usual practice, or applies a one-year statute of limitations borrowed from Section 1640, petitioners' suit was timely.").

In sum, then, petitioner would have this Court review and reverse in the first instance a district court holding that she concedes is in accordance with "lower courts throughout the nation" (Pet. 15), in favor of an extraordinary rule for which she cites no support. That, to put it mildly, is not this Court's ordinary function.

Petitioner also references some "divergent case law" (Pet. 16) about *what* statute of limitations to apply. Though uniformly against her proposed no statute of limitations rule, some of the cases petitioner cites apply a one-year limitations period under 15 U.S.C. § 1640 to TILA rescission claims, as the district court did here, and others apply the analogous state-law limitations period. *See* Pet. 15–16.

Any such divergence does not warrant this Court's review for the simple reason that petitioner's claim is time-barred under either limitations period. Petitioner does not even attempt to argue otherwise—again resting on the sole ground that *no* statute of limitations applies. As the Bank argued below, the analogous state-law limitations period is four years (for actions to rescind a contract). *See* C.A. Appellees' Br. 35 (citing Fla. Stat. § 95.11(3)(1)). Hence, even if the one-year limitations period in 15 U.S.C. § 1640 did not apply, petitioner's lawsuit would *still* be time-barred because it was filed more than six years after the Bank allegedly

failed to respond to petitioner's rescission notice. So even under state law, her lawsuit was filed more than two years too late.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: November 15, 2019