No. _____

In The
Supreme Court of the United States

NOLAN P. ESPINDA, Warden, Director of the Department of Public Safety for the State of Hawaii; CLARE CONNORS, Attorney General of the State of Hawaii,

Petitioners,

v.

ROYCE C. GOUVEIA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents clear and intractable conflicts regarding: 1) the *Rooker–Feldman* doctrine and the limitations it imposes on the jurisdiction of lower federal courts; 2) Hawai'i's sovereign right to enforce its criminal laws; and 3) the appellate deference that the Court has historically accorded to a trial court's mistrial declaration.

[1] The *Rooker–Feldman* doctrine reflects the principle set forth in 28 U.S.C. § 1257 that the Court is the only federal court that has jurisdiction to review state-court judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.* identified the "paradigm situation" in which the doctrine precludes a federal district court from proceeding as "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.* 544 U.S. 280, 284, 293 (2005).

The first question presented is: Did the Ninth Circuit err in concluding – in direct conflict with the Court's holding in *Exxon* – that the *Rooker–Feldman* doctrine is categorically not applicable to § 2241 petitions including those in which state-court losers invite district court review and rejection of allegedly injurious state-court judgments rendered before the district court proceedings commenced and pursuant to which the state-court losers are *not* in custody?

QUESTIONS PRESENTED – Continued

[2] A long line of decisions of the Court leaves no doubt that the review of a trial court's broad discretion to declare a mistrial based on manifest necessity "'abjures the application of any mechanical formula by which to judge the propriety'" of the declaration. *Arizona v. Washington*, 434 U.S. 497, 506 n. 20 (1978) (quoting *Illinois v. Somerville*, 410 U.S., at 462).

The second question presented is: Did the Ninth Circuit err in concluding – in direct conflict with the Court's holding in *Washington* – that the trial court's mistrial declaration was not supported by manifest necessity based on the result of its mechanical application of the three-step formula of its own creation that is virtually identical to the three-factor formula that *Renico v. Lett*, 559 U.S. 766, 779 (2010), made clear is not "a constitutional test that determine[s] whether a trial judge has exercised sound discretion in declaring a mistrial?"

RELATED CASES

State v. Gouveia, 139 Hawai‘i 70, 384 P.3d 846 (2016). Opinion entered October 25, 2016.

State v. Gouveia, 135 Hawai‘i 219, 348 P.3d 496 (App. 2015), *aff'd,* 139 Hawai‘i 70, 384 P.3d 846 (2016). Summary Disposition Order entered May 25, 2017.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

OPINIONS BELOW

The opinion of the Ninth Circuit (Appendix "App." 1-30) is reported at *Gouveia v. Espinda*, 926 F.3d 1102 (9th Cir. 2019). The opinion of the district court (App. 31-74) is reported at *Gouveia v. Espinda*, No. CV 17-00021 SOM/KJM, 2017 WL 3687309 (D. Haw. Aug. 25, 2017), *order clarified* [App. 84-89], No. CV 17-00021 SOM/KJM, 2017 WL 4106073 (D. Haw. Sept. 12, 2017), and *aff'd*, 926 F.3d 1102 (9th Cir. 2019). The Court of Appeals' denial of Hawai'i Petitioners' petition for rehearing *en banc* is reprinted at App. 75.

JURISDICTION

The Court of Appeals entered judgment on June 12, 2019 and denied rehearing *en banc* on July 23, 2019. App. 1, 75. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

28 U.S.C. § 1257(a), provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in

> question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 2241, provides:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. . . .
>
> (c) The writ of habeas corpus shall not extend to a prisoner unless – . . .
>
> > (3) He is in custody in violation of the Constitution or laws or treaties of the United States;

28 U.S.C. § 2254(a), provides:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Rule 52(a)(6) of the Federal Rules of Civil Procedure provides: "*Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the

reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility."

INTRODUCTION

In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), the Court identified the "paradigm situation" in which the *Rooker–Feldman* doctrine precludes a federal district court from proceeding as "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 284, 293. The doctrine reflects the principle set forth in 28 U.S.C. § 1257[1] that this Court is the only federal court that has jurisdiction to review state-court judgments. The Ninth Circuit, however, upheld the district court's refusal to apply the doctrine and dismiss Respondent Royce C. Gouveia's § 2241 habeas petition even though it possessed all the characteristics of the paradigm situation identified in *Exxon*. In the court's view, the general grant of habeas jurisdiction "provided by § 2241 . . . means that *Rooker–Feldman* is not pertinent. Accordingly, the district court correctly held the *Rooker–Feldman* doctrine inapplicable." App. 15.

The Ninth Circuit's novel determination regarding the applicability of the *Rooker–Feldman* doctrine cannot be reconciled with the Court's holding in *Exxon*

[1] Unless otherwise indicated, statutes are all within Title 28 of the United States Code.

that made clear that absent express statutory authorization from Congress, the doctrine applies to bar district courts from proceeding in cases possessing all the characteristics of the paradigm situation. This Court should not allow lower courts to circumvent binding precedent with which they disagree. Because disagreement with *Exxon* is the only plausible explanation for the Ninth Circuit's decision, the Court should grant certiorari and summarily reverse its decision.

On the merits and "'in the words of Mr. Justice Story,'" "'reviewing courts have an obligation to satisfy themselves that . . . the trial judge exercised "sound discretion" in declaring a mistrial'" based on manifest necessity. *Renico v. Lett*, 559 U.S. 766, 785 (2010) (external citation omitted, punctuation altered). "Nevertheless, those words do not describe a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge." *Arizona v. Washington*, 434 U.S. 497, 505-06 (1978) (footnote omitted). The Ninth Circuit mechanically applied the three-step formula of its own creation and ruled, "the trial court's determination that manifest necessity justified a mistrial fail[ed] at the second step" of that formula, *i.e.*, the failure to consider the alternatives to a mistrial. App. 21-22 (external footnote omitted).

The Ninth Circuit's decision cannot be reconciled with the Court's holding in *Renico* that held a nearly identical three-step formula did not establish "a constitutional test that 'determine[s]' whether a trial judge has exercised sound discretion in declaring a mistrial."

Id. 559 U.S. at 779 (external citation omitted, punctuation altered). The court's mechanical application of its own three-step formula betrays the same errors that led to the reversals of the Court of Appeals' decisions in *Washington* and *Renico*. The Ninth Circuit's decision – as it stands – undermines the principle to which the Court has consistently adhered that "'abjures the application of any mechanical formula by which to judge the propriety of declaring a mistrial in the varying and often unique situations arising during the course of a criminal trial.'" *Washington*, 434 U.S. at 506 n. 20 (quoting *Illinois v. Somerville*, 410 U.S. at 462). The Court should grant certiorari and summarily reverse the decision.

STATEMENT OF THE CASE

Hawai'i Petitioners tried Gouveia for manslaughter for causing the death of Albert Meyer. App. 3. Gouveia struck Meyer causing him to fall, hit his head on the pavement, after which he later died. *Ibid.* Gouveia claimed he struck Meyer because he was "concerned that Meyer was about to attack" him. *State v. Gouveia*, 135 Hawai'i 219, 348 P.3d 496 (App. 2015), *aff'd*, 139 Hawai'i 70, 384 P.3d 846 (2016).

The jury received the case and after deliberating a few hours sent two communications to the trial court: "Communication No. 2 . . . 'Concern. This morning on prosecutor's side of courtroom there was a man, shaved head, glaring and whistling at [Gouveia]. We have

concern for our safety as jurors[]'"; and "Communication No. 3 . . . 'We reached a verdict.'" App. 33 (punctuation altered). Pursuant to the parties' request, the trial court and the parties questioned individually all the jurors regarding the incident involving the menacing man and their concern for their safety as jurors. App. 4, 63-64. "Special precautions were taken to ensure no juror revealed the verdict during the individual *voir dire*[]" and "[a]t no point during the proceedings did the [c]ourt take, read or otherwise get any indication of the jury's verdict." App. 78, 79.

The questioning of all jurors spanned two days and was unhurried and thorough. App. 78. Based on the jurors' responses, the trial court found, *inter alia*, that "some of the jurors had a 'really serious concern for their personal safety.'" App. 37 (punctuation altered). The trial court also found that "the jurors' statements that the incident did not affect their decision-making process and/or deliberations [were] not credible" and "the concern for personal safety as expressed by the jurors had an impact on the jurors' decisions based on the totality of the circumstances present and thus its effect on the subsequent verdict was not harmless beyond a reasonable doubt." App. 79-80. Gouveia's counsel agreed with the trial court that neither a continuance nor additional instructions from the court would "cure" the situation or "allow [them] to take the verdict," and therefore there was "no other remedy short of a mistrial." App. 105. Accordingly, the trial court declared a mistrial based on "manifest necessity." App. 83. The trial court denied Gouveia's motion

to dismiss in which he argued that there was no manifest necessity for the mistrial, and as such, double jeopardy barred his retrial. App. 6.

During Gouveia's appeal of the trial court's ruling, the Hawai'i Intermediate Court of Appeals "unsealed the verdict" for the first time, which noted "not guilty." *State v. Gouveia*, 139 Hawai'i 70, 75 n. 2, 384 P.3d 846, 851 n. 2 (2016). The court affirmed the trial court's rulings, after which Gouveia sought review in the Hawai'i Supreme Court. App. 7. In a published opinion, the court affirmed the decision of the lower appellate court holding that the trial court did not abuse its discretion in deciding that manifest necessity existed for a mistrial and that there were no reasonable alternatives to a mistrial. *Ibid.*

Gouveia did not seek a writ of certiorari from this Court, and instead sought review of the Hawai'i Supreme Court's decision by filing a federal petition for habeas corpus pursuant to § 2254. App. 7. The district court ruled that Hawai'i Petitioners correctly argued (and Gouveia conceded) that § 2254 was "inapplicable" because Gouveia was not " 'in custody pursuant to the judgment of a State court.' " App. 42. The district court rejected Hawai'i Petitioners' contention that the *Rooker–Feldman* doctrine applied to bar the district court from proceeding, ruling in relevant part, "it is well settled that the *Rooker–Feldman* doctrine is inapplicable to cases seeking habeas corpus relief." App. 46 (external citation omitted). The court ruled that its jurisdiction to review the judgment was "under 28 U.S.C. § 2241, which provides federal courts with a general

grant of habeas authority." App. 43 (external citation omitted). On the merits, the district court disagreed with the Hawai'i Supreme Court's decision affirming the trial court's mistrial declaration. App. 73-74. Although Gouveia's counsel agreed with the trial court that neither a continuance nor additional instructions from the court were viable alternatives to a mistrial, App. 105, the court found error because the trial court did not consider the "'commonplace' action" that included, *inter alia*, a continuance and "alleviating the jurors' safety concern through information and/or instructions." App. 72.

Pursuant to §§ 1291, 1294(1), and 2253(a), Hawai'i Petitioners appealed to the Ninth Circuit arguing, *inter alia*, that § 2241 confers habeas but not appellate jurisdiction to district courts and therefore, the *Rooker–Feldman* doctrine applied to bar the district court's exercise of appellate jurisdiction to review the judgment Gouveia attacked in his § 2241 petition. App. 8-9. The court rejected the argument ruling that the general grant of habeas jurisdiction provided by § 2241 meant, "*Rooker–Feldman* is not pertinent. Accordingly, the district court correctly held the *Rooker–Feldman* doctrine inapplicable." App. 15. On the merits, Hawai'i Petitioners contended that the Hawai'i Supreme Court correctly ruled that the trial court's mistrial declaration was not an abuse of discretion. Without determining "precisely what level of deference [was] appropriate" to accord to the trial court's mistrial declaration, the court mechanically applied the three-step formula from its decision in *United States v.*

Chapman, 524 F.3d 1073, 1082 (9th Cir. 2008), and ruled that "the trial court's determination that manifest necessity justified a mistrial fail[ed] at the second step" of that formula, *i.e.*, consideration of the alternatives to a mistrial. App. 21-22 (external footnote omitted). Accordingly, the court affirmed the district court's order granting the writ. App. 30. The court denied Hawai'i Petitioners' timely petition for rehearing *en banc*. App. 75.

REASONS FOR GRANTING THE PETITION

In this case, the Ninth Circuit decided important questions of federal law in a manner that directly conflicts with this Court's precedent. First, the Ninth Circuit's affirmance of the granting of the writ is irreconcilable with *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), that held that absent express statutory authorization from Congress, the *Rooker–Feldman* doctrine bars federal district courts from exercising appellate jurisdiction to review and undo state-court judgments. Because this case presents the paradigm situation identified in *Exxon* to which the doctrine applies, the court's refusal to dismiss the matter for lack of jurisdiction justifies summary reversal of its decision.

Second, the Ninth Circuit's affirmance of the granting of the writ also conflicts directly with *Arizona v. Washington*, 434 U.S. 497 (1978), that reiterated Mr. Justice Story's formulation – "reviewing courts have an

obligation to satisfy themselves that . . . the trial judge exercised 'sound discretion' in declaring a mistrial" based on manifest necessity. *Id*. at 514 (punctuation altered). However, manifest necessity does "not describe a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge." *Id*. at 505–06 (internal footnotes omitted). Nevertheless, and in direct contravention of *Washington*, the court rejected the trial court's mistrial declaration after mechanically applying the three-step formula of its own creation, which is virtually identical to the three-factor formula the Court in *Renico v. Lett*, 559 U.S. 766, 779 (2010), ruled was not "a constitutional test that determine[s] whether a trial judge has exercised sound discretion in declaring a mistrial." The court's decision is wrong and merits summary reversal.

I. The Court Should Reject The Ninth Circuit's Ruling That The *Rooker–Feldman* Doctrine Is, Without Exception, Inapplicable To § 2241 Petitions Even In Those Cases That Possess All The Characteristics Of The Paradigm Situation Identified In *Exxon*.

A. *Rooker–Feldman* reflects the principle set forth in § 1257 that this Court is the only federal court that has jurisdiction to review state-court judgments.

Article III of the United States Constitution "vests the judicial power 'in one supreme Court, and in such inferior Courts as the Congress may . . . establish,' § 1." *Patchak v. Zinke*, ___ U.S. ___, 138 S.Ct. 897, 906

(2018) (punctuation altered). "It is axiomatic, as a matter of history as well as doctrine, that the existence of appellate jurisdiction in a specific federal court over a given type of case is dependent upon authority expressly conferred by statute." *Carroll v. United States*, 354 U.S. 394, 399 (1957). In § 1257(a), Congress has generally conferred appellate jurisdiction to oversee state-court judgments to this Court:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any . . . right, privilege, or immunity is specially set up or claimed under the Constitution or . . . statutes of . . . the United States.

The Court has consistently interpreted § 1257 as precluding "lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and 60 years later in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the Court applied the preceding interpretation of § 1257 and found the district courts lacked appellate jurisdiction to review and reject injurious state-court judgments. *Exxon*, 544 U.S. at 291–92. The decisions in *Rooker* and *Feldman* have come to be known as the *Rooker–Feldman* doctrine and the "paradigm situation" in which the doctrine precludes a federal district court from proceeding arises in "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 284, 293. It is important to note, that *Exxon* made clear that the doctrine is not triggered in federal habeas corpus petitions brought under "28 U.S.C. § 2254(a)" because Congress "explicitly empower[ed] district courts to oversee . . . state-court judgments" in "federal habeas review of state prisoners' petitions" brought under that section. *Id*. at 292 n. 8 (2005) (citation in original).

B. The Court should reject the Ninth Circuit's reformulation of the *Rooker–Feldman* doctrine that authorizes district courts to exercise appellate jurisdiction to review and undo state-court judgments.

"'[E]very federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" *Grupo Dataflux v. Atlas Glob. Group, L.P.*, 541 U.S. 567, 593 (2004) (citation omitted, punctuation altered). Because Gouveia's § 2241 petition possessed all the characteristics of the paradigm situation identified in *Exxon* that triggers the *Rooker–Feldman* doctrine, the Ninth Circuit was required to analyze the jurisdictional issue with exactness to ensure the district court only exercised the power granted to it by Congress. First, Gouveia was the loser in the courts of Hawai'i. App. 6-7. Second, Gouveia complained of the injury caused by the Hawai'i Supreme Court's decision affirming the trial court's mistrial declaration and the

denial of his motion to bar his retrial on double jeopardy grounds. *Id*. 7. Third, Gouveia invited the district court to review and reject that decision. *Ibid*. Fourth, the Hawai'i Supreme Court rendered the decision before the district court proceedings commenced. *Ibid*. Nevertheless, the Ninth Circuit refused to apply the doctrine and dismiss Gouveia's petition for lack of jurisdiction – why, because in the court's view "*Rooker–Feldman* is inapplicable to § 2241 petitions." App. 30.

Citing *Exxon* as support for its ruling, the court reasoned:

> Because the *Rooker–Feldman* principle is purely statutory, "Congress, if so minded, may explicitly empower district courts to oversee certain state-court judgments." *Exxon Mobil*, 544 U.S. at 292 n. 8, 125 S.Ct. 1517. Put differently, Congress may, via statute, provide federal district courts with jurisdiction to review state court decisions as long as that jurisdiction is conferred *in addition to* the original jurisdiction established under § 1331. And Congress "has done so, most notably, in authorizing federal habeas review of state prisoners' petitions." *Id.*

App. 10 (citations, emphasis, and punctuation in original).

The court's reasoning betrays a fundamental misreading of *Exxon*. The court extracted the quotes from the footnote attached to the following passage in *Exxon*:

> Because § 1257, as long interpreted, vests authority to review a state court's judgment solely in this Court, *e.g.*, *Feldman* . . . *Rooker* . . . the District Courts in *Rooker* and *Feldman* lacked subject-matter jurisdiction. See *Verizon Md. Inc.*, 535 U.S., at 644, n. 3, 122 S.Ct. 1753 ("The *Rooker–Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, see § 1257(a).").[8]

Exxon, 544 U.S. at 292 (portions of internal citations omitted, punctuation and footnote in original). Footnote 8 is actually a single sentence that reads, "Congress, if so minded, may explicitly empower district courts to oversee certain state-court judgments and has done so, most notably, in authorizing federal habeas review of state prisoners' petitions. 28 U.S.C. § 2254(a)." *Id*. at 292 n. 8 (citation in original). In context, the quote makes clear that the doctrine is not triggered in petitions brought under § 2254 because Congress has "explicitly empower[ed] district courts to oversee . . . state-court judgments" being attacked in those petitions. *Ibid*.

A fair reading of the analysis in *Exxon* reveals that the Court never held that the *Rooker–Feldman* doctrine is inapplicable to § 2241 petitions. "'[I]t is this Court's prerogative alone to overrule one of its precedents.'" *Bosse v. Oklahoma*, ___ U.S. ___, 137 S.Ct. 1, 2 (2016) (external citation omitted, punctuation altered).

By rephrasing the quote without the specific reference to § 2254(a), the Ninth Circuit fundamentally and erroneously altered the holding of the case. The court, however, lacked any cognizable authority to insulate district court review of § 2241 petitions in cases, such as Gouveia's, that possess all the characteristics of the paradigm situation to which the doctrine applies to bar district courts from proceeding. The Ninth Circuit's decision also disregards the Court's admonition that the limited jurisdiction of federal courts "is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (external citation in original omitted). As discussed below, the decision also betrays a number of critical flaws in the court's interpretative analysis.

"'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Dean v. United States*, 556 U.S. 568, 573 (2009) (external citation omitted, punctuation altered). Presumably, the selectivity Congress exhibited by including judgment in the text of § 2254 and excluding judgment from the text of § 2241 was not the result of "a simple mistake in draftsmanship." *Corley v. United States*, 556 U.S. 303, 315 (2009) (external citation omitted). Moreover, Congress is presumed "to have had knowledge of the interpretation," *Lorillard v. Pons*, 434 U.S. 575, 581 (1978), the Court had consistently given § 1257, when it enacted the predecessors to §§ 2241 and 2254 in 1948 that conferred jurisdiction to

district courts to review state-court judgments being attacked in petitions brought under § 2254, but not § 2241. Act of June 25, 1948, c. 646, 62 Stat. 964, Act of June 25, 1948, c. 646, 62 Stat. 967. Here, the presumption is particularly appropriate because Congress has continued to confer appellate jurisdiction to districts courts in § 2254, but not § 2241. Nor has Congress amended § 1257 to authorize district courts to review state-court judgments being attacked in § 2241 petitions. Therefore, the court's reading of § 2241 as empowering district courts to review state-court judgments being attacked in petitions brought under that section rests on the improbable assumption that Congress would choose a "surprisingly indirect route to convey an important and easily expressed" conferral of appellate jurisdiction to district courts to review judgment being attacked in § 2241 petitions. *Landgraf v. USI Film Products*, 511 U.S. 244, 262 (1994).

The inclusion of *judgment* in the text of § 2254, along with specific standards that apply to the review of such judgments leaves no doubt that Congress intended to confer expressly appellate jurisdiction to districts courts in that section. *See Exxon*, 544 U.S. at 292. Notwithstanding the absence of any text in § 2241 similar to that of § 2254 that expressly empowers district courts to review state-court judgments, in the Ninth Circuit's view the general grant of habeas jurisdiction "provided by § 2241," App. 15, authorized the district court to exercise appellate jurisdiction to review and undo the judgment rendered by the Hawai'i Supreme Court. However, as the Sixth Circuit has aptly noted, "the question is not merely whether Congress has

conferred jurisdiction at all, but whether it has conferred *appellate* jurisdiction" to the lower federal courts over particular claims. *In re Isaacs*, 895 F.3d 904, 914 (6th Cir. 2018) (emphasis in original).

Simply put, the court's ruling elides the difference between appellate and habeas jurisdiction by reading the former into the latter. The court, however, lacked any authority to read appellate jurisdiction into § 2241. *See Dean v. United States*, 556 U.S. 568, 572 (2009) (courts should "'ordinarily resist[s] reading words . . . into a statute that do not appear on its face'" (external citation omitted; punctuation altered)). Relatedly, as this Court recently made clear – federal courts are "not at liberty to rewrite the statute passed by Congress and signed by the President [ ]" and "may not engraft [its] own exceptions onto the statutory text." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, ___ U.S. ___, 139 S.Ct. 524, 528, 530 (2019) (citation omitted, punctuation altered). The court's ruling that "*Rooker–Feldman* is inapplicable to § 2241 petitions," App. 30, also creates an exception it had no authority to make to § 1257 by authorizing district court review of state-court judgments attacked in petitions brought under § 2241. As validation for its ruling, the court relied on its own precedent to declare that it has "consistently held that § 2241 confers jurisdiction for 'habeas petition[s] raising a double jeopardy challenge to a petitioner's pending retrial in state court'" and "*Stow v. Murashige*, 389 F.3d 880 (9th Cir. 2004)" was the "first case so to hold." App. 11 (citation in original and punctuation altered).

At the outset, the Court has noted, "We do not carve out a special-purpose jurisdictional exception for double jeopardy allegations with respect to custody. Nothing in our discussion of [the] custody [requirement of § 2241] is dependent upon the nature of the claim that is raised." *Justices of Boston Mun. Court v. Lydon*, 466 U.S. 294, 302 n. 2 (1984). Furthermore, "[w]hen a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011). A perusal of the decision in *Stow* reveals that the panel did not consider whether § 2241 confers appellate jurisdiction to district courts to review state-court judgments being attacked in petitions brought under that section. *See generally Stow v. Murashige*, 389 F.3d 880, 885–88 (9th Cir. 2004). Furthermore, *Stow* did not mention the *Rooker–Feldman* doctrine. *Ibid*. The panel realized that § 2254 might not be the proper jurisdictional statute because the petitioner was not in custody pursuant to the judgment he was attacking – a fact that the parties and the district court overlooked[2] – and ordered supplemental briefs discussing only "whether Stow's federal habeas petition should be treated as one arising under 28 United

[2] The petitioner attacked the decision rendered by the state's highest court that reversed his conviction for attempted first-degree murder, but ruled that his retrial for attempted second-degree murder would not "subject[ ] him to double jeopardy." *Stow*, 389 F.3d at 882. The district court granted his petition "[w]ithout considering whether § 2254 was the proper jurisdictional statute." *Id.* at 885–86.

States Code (U.S.C.) § 2241 or 28 U.S.C. § 2254." App. 94-95; *see also* "Petitioner-Appellee Steven Donald Stow's Supplemental Brief" No. 03-17036, 2004 U.S. Court of Appeals, WL 1816637 (9th Cir. July 1, 2004).

The Ninth Circuit's reliance on *Stow* as authority validating its ruling that "*Rooker–Feldman* is inapplicable to § 2241 petitions," App. 30, reveals the entrenched nature of the court's view regarding the applicability of the doctrine. The court is unlikely to alter its view and therefore, it is imperative for the Court to speak again to *Rooker–Feldman* to permit the doctrine to serve its historical and congressionally mandated role of preventing the lower federal courts from exercising appellate jurisdiction to review judgments rendered by the state's highest courts.

C. The Court should reject the Ninth Circuit's erroneous and conflicting reformulation of the *Rooker–Feldman* doctrine.

The Court should grant this petition and disapprove the Ninth Circuit's novel reformulation of the *Rooker–Feldman* doctrine that, in the court's view, renders it "inapplicable to § 2241 petitions." App. 30. The court's reformulation of the doctrine accords no deference to judgments rendered by the states' highest courts, which typifies federal habeas corpus review as evidenced by the strict limitations Congress enacted for federal habeas challenges to state convictions. *See generally* §§ 2254(b), (c), and (d). If applied consistently, the Ninth Circuit's reformulation of the doctrine

would also eviscerate the congressionally mandated limitations on the jurisdiction of lower federal courts that the Court has historically upheld.

The Ninth Circuit has presented itself as an outlier among the circuits that have considered the *Rooker–Feldman* doctrine before and after *Exxon*. Rather than asking, as other circuits do, whether the case possesses all the characteristics of the paradigm situation identified in *Exxon*, and if so, is there a congressional enactment authorizing the review of the state-court's judgment – the Ninth Circuit only asks whether the case is a § 2241 petition. If the case is a § 2241 petition, the jurisdictional analysis is concluded and the district court may conduct appellate review of the state-court judgment being attacked in the petition. By categorically excepting claims raised in § 2241 petitions that would otherwise trigger the jurisdictional bar of the *Rooker–Feldman* doctrine, the court has created a conflict with rulings by the Second, Fourth, and Tenth Circuits. Those circuits recognize that absent express statutory authorization from Congress, the doctrine applies, without exception, to bar district courts from reviewing state-court judgments in cases possessing all the characteristics of the paradigm situation identified in *Exxon*.

The Second Circuit's understanding of § 1257 and the *Rooker–Feldman* doctrine set forth in *Kropelnicki v. Siegel*, 290 F.3d 118 (2d Cir. 2002), seems presciently tailored to the analysis of the statute and the doctrine set forth in *Exxon*. The court ruled that the "doctrine reflects the principle set forth in 28 U.S.C. § 1257 that

the Supreme Court is the only federal court that has jurisdiction to review state court judgments . . . unless otherwise provided by Congress, *see, e.g.*, 28 U.S.C. § 2254." *Id.* at 128 (citations in original omitted). Since *Exxon*, the Second Circuit continues to recognize that the "'doctrine reflects the principle set forth in 28 U.S.C. § 1257 that the Supreme Court is the only federal court that has jurisdiction to review state court judgments . . . unless otherwise provided by Congress.'" *Niles v. Wilshire Inv. Group, LLC*, 859 F.Supp.2d 308, 334 (E.D.N.Y. 2012) (footnote and external citation omitted, punctuation altered). Citing *Exxon*, the court also acknowledged that a "notable exception to this jurisdictional rule is habeas corpus review. *See* 28 U.S.C. § 2254(a); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 n. 8, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005)." *Id*. at 334 n. 23 (external citation in original). In recognition of the bar the doctrine imposes on its jurisdiction, Second Circuit Chief United States District Judge McMahon, in a very recent decision held:

> A federal district court has jurisdiction to consider a *habeas corpus* petition brought by a person in custody pursuant to a state-court judgment in which he or she challenges that judgment. *See* 28 U.S.C. § 2254(a). Otherwise, the only federal court that can review a state-court judgment is the Supreme Court of the United States. *See* 28 U.S.C. § 1257(a).

Sottile v. Freeman, No. 1:19-CV-4819 (CM), 2019 WL 4933667, at *2 (S.D.N.Y. Oct. 4, 2019) (citations in original).

Neal v. Johnson, a decision from the Fourth Circuit, held, "Federal courts lack jurisdiction under § 2241 to review state criminal judgments. . . . Neither § 2254 nor any other statute provide for allowing federal habeas review of state criminal judgments under § 2241, *Woodfin v. Angelone*, 213 F. Supp. 2d 593, 595 (E.D. Va. 2002) (rejecting similar argument)." *Id*. No. 1:09CV458 (LMB/TCB), 2009 WL 10702285, at *1 (E.D. Va. July 27, 2009) (internal citations omitted, external citation in original).

The Tenth Circuit recognizes that the *Rooker–Feldman* doctrine applies to bar district courts from proceeding in cases possessing all the characteristics of the paradigm situation identified in *Exxon*, but "does not apply in the habeas context because Congress has authorized federal district courts to review state prisoners' petitions. *See Exxon Mobil Corp.*, 544 U.S. at 292, 125 S.Ct. 1517 n. 8 (citing 28 U.S.C. § 2254(a))." *Bear v. Patton*, 451 F.3d 639, 641 (10th Cir. 2006) (external citation in original).

The Ninth Circuit's reformulation of the *Rooker–Feldman* doctrine creates a conflict with the Second, Fourth, and Tenth Circuits that undermines the comprehensive system of federal collateral review of state court criminal judgments that Congress created to establish nationwide standards for the writ of habeas corpus. The lack of consistency between the court

and those circuits threatens "the constitutional balance between the state and federal judiciaries" reflected in the structure of federal habeas corpus. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, ___ U.S. ___, 136 S.Ct. 1562, 1573 (2016). If the doctrine is to maintain the teeth historically given to it by the Court, it must be applied to this case – and others like it – that possess all the characteristics of the paradigm situation identified in *Exxon*. Only this Court can correct the errors in the Ninth Circuit's decision. This case fully developed the jurisdictional issue. In fact, another district court judge in the district of Hawai'i has refused to apply the doctrine in a § 2241 petition possessing all the characteristics of the paradigm situation identified in *Exxon* ruling, "'it is well settled that the *Rooker-Feldman* doctrine is inapplicable to cases seeking habeas corpus relief.'" *Deedy v. Suzuki*, 326 F.Supp.3d 1022, 1036 (D. Haw. 2018) (appeal pending in 9th Cir.) (punctuation altered, external footnote omitted and citing "*Gouveia*, 2017 WL 3687309"). Accordingly, the case is an excellent vehicle warranting the Court's exercise of its supervisory authority over the federal judiciary to correct the error.

II. The Court Should Reject The Ninth Circuit's Mechanical Application Of An Erroneous Legal Standard Of Its Own Creation Upon Which It Relied To Judge And Reject The Trial Court's Mistrial Declaration.

"[E]xternal causes tending to disturb the [jury's] exercise of deliberate and unbiased judgment" are

"absolutely" forbidden and depending on the circumstances could require a trial court to declare a mistrial. *Mattox v. U.S.*, 146 U.S. 140, 149–50 (1892). "The decision whether to grant a mistrial is reserved to the 'broad discretion' of the trial judge, a point that 'has been consistently reiterated in decisions of this Court.'" *Renico v. Lett*, 559 U.S. 766, 774 (2010) (external citation omitted, punctuation altered). "[R]eviewing courts have an obligation to satisfy themselves that, in the words of Mr. Justice Story, the trial judge exercised 'sound discretion' in declaring a mistrial" based on manifest necessity. *Arizona v. Washington*, 434 U.S. 497, 514 (1978) (punctuation altered). However, manifest necessity does "not describe a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge." *Id*. at 505–06 (internal footnotes omitted).

A. The prohibited external cause and its irreparably prejudicial effect on the jurors' impartiality.

Here, jury "Communication No. 2," App. 77, alerted the trial court to the existence of a forbidden *external* cause that could have disturbed the jury's "exercise of deliberate and unbiased judgment." *Mattox*, *supra*. The communication stated, "'Concern. This morning on prosecutor's side of courtroom there was a man, shaved head, glaring and whistling at [Gouveia]. We have concern for our safety as jurors.'" App. 77. "Communication No. 2 raised the concern of the [c]ourt and both counsel that the incident may have substantially prejudiced

[Gouveia's] . . . right to a fair trial." App. 81. Acceding to the parties' request, App. 3-4, "[a]ll twelve jurors were individually questioned on September 6, 2013, and September 9, 2013, by both the Court and parties specifically about Communication No. 2. Special precautions were taken to ensure no juror revealed the verdict during the individual voir dire." App. 78.

The trial court found, *inter alia*, "that the jurors' statements that the incident did not affect their decision-making process and/or deliberations [were] not credible as evidenced by the plain language of Communication No. 2 and answers of the voir dire of each individual juror," App. 79, and therefore:

> Under the totality of the circumstances . . . the jury was not impartial in their deliberation and decision-making process. Based on the foregoing, there is no other remedy short of a mistrial to cure the issue at hand as neither a continuance nor a further jury instruction would appropriately address the issue of an impartial jury and its subsequent tainted verdict.

App. 82. Accordingly, the trial court declared a mistrial based on manifest necessity and provided a detailed oral explanation for its ruling that included facts supporting its assessment of the jurors' credibility. App. 4-6. The trial court elaborated on its oral ruling in its filed "FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING STATE'S ORAL MOTION FOR MISTRIAL BASED ON MANIFEST NECESSITY" ("Order"). *See generally* App. 76-83.

B. The Ninth Circuit's refusal to accord the required appellate deference to the trial court's mistrial declaration

"[T]he overriding interest in the evenhanded administration of justice" required the Ninth Circuit to accord "the highest degree of respect to the trial judge's evaluation of the likelihood that the impartiality of one or more jurors may have been affected" by the incident involving the menacing man. *Washington*, 434 U.S. at 511. Because the trial court was "more 'conversant with the factors relevant to the determination' than any reviewing court [could] possibly be," the Court accords "appellate deference" to the trial court's broad discretion in addressing the impartiality. *Id.* at 513–14 (external citation and footnote omitted, punctuation altered). The Court's precedent mandated that the Ninth Circuit conduct its review of the trial court's mistrial declaration to determine whether the "judge exercised 'sound discretion' in declaring [the] mistrial." *Washington*, 434 U.S. at 514 (punctuation altered). Therefore, the trial court's finding that "the jury was not impartial in their deliberation and decision-making process," App. 82, that undergirded the mistrial declaration "may 'be overturned only for "manifest error."'" *Mu'Min v. Virginia*, 500 U.S. 415, 428 (1991) (external citation omitted, punctuation altered). "Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula." *United States v. Wood*,

299 U.S. 123, 145–46 (1936). Consistent therewith, the Court's precedent makes clear that the review of the trial court's broad discretion to declare a mistrial based on manifest necessity "'abjures the application of any mechanical formula by which to judge the propriety'" of the declaration. *Washington*, 434 U.S. at 506 n. 20 (1978) (quoting *Illinois v. Somerville*, 410 U.S. at 462).

Here, the Ninth Circuit rejected the trial court's mistrial declaration based on its erroneous and mechanical application of the three-step formula set forth in its decision in *United States v. Chapman*, 524 F.3d 1073, 1082 (9th Cir. 2008). App. 18, 22. The court ruled, "the trial court's determination that manifest necessity justified a mistrial fail[ed] at the second step" of *Chapman* – whether the trial court "'considered the alternatives to a mistrial and chose[] the alternative least harmful to a defendant's rights.'" App. 22 (brackets in original, external footnote omitted, punctuation altered).

At the outset it bears noting that the court conspicuously glided over the following exchange between the trial court and Gouveia's counsel regarding alternatives to a mistrial:

> THE COURT: Well, if I declare a mistrial based on the reasons that [the deputy prosecutor] has given me, it's a no-brainer it's manifest necessity, right? There's no – put it this way. There's no other remedy short of a mistrial that's going to cure this or allow us to

> take the verdict, correct? It's not like we can continue the trial –
>
> [GOUVEIA'S COUNSEL]: I understand.
>
> THE COURT: – or I can give them a further instruction.
>
> [GOUVEIA'S COUNSEL]: Correct, correct.
>
> THE COURT: You know, they reached a verdict already and then they tell me that there was this other thing. So, you know, if I think it rises to the level of a mistrial, I'm pretty much going to find that there's manifest necessity 'cause there's nothing short of a mistrial that I can do. It's a tainted verdict, if that's going to be my ruling. I mean, you agree with that, right?
>
> [GOUVEIA'S COUNSEL]: I would agree with that, your honor.

App. 105.

In light of the foregoing exchange, the Ninth Circuit's ruling that the trial court's mistrial declaration failed the second step of its formula is unsupportable. Moreover, the court's mechanical application of its own three-step formula betrays the same error that was a factor in the reversal of the Sixth Circuit's rejection of the trial court's mistrial declaration in *Renico*. The following side-by-side comparison of the court's three-step *Chapman* formula and the three-factor test the Sixth Circuit mechanically applied that was at issue in *Renico* reveals an unmistakable similarity:

Ninth Circuit's three-step formula	**Sixth Circuit's three-factor test**
"'(1) heard the opinions of the parties about the propriety of the mistrial,	"'(1) heard the opinions of parties' counsel about the propriety of the mistrial;
(2) considered the alternatives to a mistrial and chose [ ] the alternative least harmful to a defendant's rights,	(2) considered the alternatives to a mistrial; and
[and/or]	
(3) acted deliberately instead of abruptly'" [App. 21-22 (citations omitted, punctuation altered)]	(3) acted deliberately, instead of abruptly'" [*Renico*, 559 U.S. at 778–79 (external citation omitted, punctuation altered)]

The Court held that the Sixth Circuit erred in relying on the three-factor test of its own creation as set forth in "*Fulton v. Moore*, 520 F.3d 522 (C.A. 6 2008)." *Renico*, 559 U.S. at 778–79. In relevant part, the Court noted that *Arizona v. Washington*, 434 U.S. 497 (1978) "nowhere established th[o]se three factors as a constitutional test that 'determine[s]' whether a trial judge has exercised sound discretion in declaring a mistrial." *Id*. at 779 (external citation omitted, punctuation altered). Unless this Court is inclined to revisit the test that was repudiated in *Renico*, the Ninth Circuit's three-step formula is an incorrect legal standard for determining the propriety of a state trial court's

mistrial declaration. The court's ruling that it "need not finally determine precisely what level of deference is appropriate," App. 21, exacerbated the magnitude of its erroneous reliance on the incorrect legal standard. The court's flawed interpretative analysis further exposes the untenable nature of the court's rejection of the trial court's mistrial declaration.

This Court requires "singular deference" to the trial court's judgments about the credibility of the jurors because the various cues that " 'bear so heavily on the listener's understanding of and belief in what is said' are lost on an appellate court later sifting through a paper record." *Cooper v. Harris*, ___ U.S. ___, 137 S.Ct. 1455, 1474 (2017) (punctuation altered). Rule 52(a)(6) of the Federal Rules of Civil Procedure provides: "*Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." Rule 52 "contains no exception for findings that diverge from those made in another court." *Cooper*, 137 S.Ct. at 1468 (external citation omitted). The trial court determined that "the jury was not impartial in their deliberation and decision-making process," App. 82, based on its finding that "the jurors' statements that the incident did not affect their decision-making process and/or deliberations [were] not credible." App. 79. Therefore, "Rule 52(a) demands even greater deference to the trial court's findings" regarding the credibility of the jurors. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575 (1985).

Notwithstanding the deference the trial court's credibility assessment deserved, the Ninth Circuit ruled, "as the district court noted, 'nothing in the record identifies facts supporting [the] finding that the jurors were not believable.' . . . In particular, the trial court 'ma[de] no reference to any juror's demeanor.'" App. 25 (citations omitted, punctuation altered). Quite similar to the error noted in *Washington*, the court "attached undue significance to the form of the ruling." *Id*. 434 U.S. at 503; *cf. Johnson v. Williams*, 568 U.S. 289, 300 (2013) ("federal courts have no authority to impose mandatory opinion-writing standards on state courts" (external citation omitted)). *Washington* holds that a trial court is not required "to articulate on the record all the factors which informed the deliberate exercise of [its] discretion" when declaring a mistrial. *Id*. 434 U.S. at 517 (footnote omitted). That said, the following findings the trial court set forth in its Order belie the court's characterization of the record:

> 3. On September 6, 2013, while deliberating, the jury made the following . . . communication[] with the court: . . .
>
> b. Communication No. 2 . . . "Concern: This morning on the prosecutor's side of the courtroom there was a man, shaved head, glaring and whistling at defendant [*i.e.*, Gouveia]. We have concern for our safety as jurors."
>
> * * *
>
> 8. Four jurors witnessed an individual seated on the prosecutor's side of the courtroom whistling and/or glaring at Defendant [*i.e.*,

Gouveia] ("incident") prior to commencing deliberation.

9. Seven of the jurors indicated discussion of the incident occurred before the verdict, ranging from within ten minutes of commencing deliberation to the end of deliberation. At least four of these seven jurors indicated discussion of the incident occurred at the beginning of deliberations, specifically that it was one of the first topics discussed.

10. During the discussion of the incident prior to verdict, the jurors who actually observed the incident communicated to the other jurors fear for their own safety.

11. Some of the juror answers regarding Communication No. 2 and the incident included the following:

    a. Some of the jurors were worried about retaliation;

    b. The unidentified male's look appeared hostile during the incident;

    c. Some jurors were concerned;

    d. Some jurors felt intimidated; and

    e. The incident impacted other jurors' decisions.

12. Although all twelve jurors indicated that neither the incident itself nor the discussion regarding the incident during the deliberations affected their own decision, at least one juror indicated that the incident appeared to have

impacted the deliberation process and decision.

* * *

15. The Court finds that the jurors' statements that the incident did not affect their decision-making process and/or deliberations are not credible as evidenced by the plain language of Communication No. 2 and answers of the voir dire of each individual juror.

16. The Court further finds that the concern for personal safety as expressed by the jurors had an impact on the jurors' decisions based on the totality of the circumstances present and thus its effect on the subsequent verdict was not harmless beyond a reasonable doubt.

App. 77-80 (punctuation in original).

Here, the record reveals the trial court did not act irrationally or irresponsibly in addressing the unique situation that arose during the presentation of evidence that irreparably prejudiced the jury's impartiality. On the contrary, the trial court acted responsibly and deliberately according thoughtful consideration to the parties' opinions that was consistent with its "'duty . . . to protect the integrity of the trial,'" *Washington*, 434 U.S. at 513 (punctuation altered), as well as Gouveia's interests.

Under the circumstances unique to this case, the Ninth Circuit failed to grant the trial court the deference required by the Court's double jeopardy precedents. The court has demonstrated its resolve to

continue its mechanical application of the incorrect standard – *Chapman*'s three-step formula – and in doing so reveals the entrenched nature of its view regarding the determination of the propriety of a state trial court's mistrial declaration. Absent this Court's intervention, the Ninth Circuit's refusal to adhere to the Court's well-settled precedent regarding the review of a trial court's mistrial declaration will continue to frustrate the sovereign right of Hawai'i, and the other states and territories within the circuit, to enforce its criminal laws.

CONCLUSION

The Ninth Circuit's decision conflicts with the teachings of the Court, and conflicts with the decisions of at least three other Circuits. To stem the confusion the decision sows, the petition for certiorari should be granted and the conflict resolved.

Respectfully submitted,

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