NO. 19-516

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

NOLAN ESPINDA,
Hawaii Department of Public Safety Director, et al.
Petitioners

- vs -

ROYCE C. GOUVEIA
Respondent

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does 28 USC §2241 vest a federal district court with jurisdiction to grant a writ of habeas corpus to an accused, who is on conditional pretrial release in a state criminal case, on a meritorious claim that the state's pending trial of him will violate his Fifth Amendment right against double jeopardy?

2. Did the Ninth Circuit correctly hold that the state courts' failure to give effect to a jury's verdict of acquittal violated the respondent's right against double jeopardy, because some jurors' concern that a trial spectator (whom they associated with the prosecution) might retaliate against them for acquitting the respondent did not constitute a manifest necessity to declare a mistrial?

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RELATED PROCEEDINGS

The petitioners fail to list the state court proceedings from which the respondent's habeas corpus proceeding in the federal courts arose. The Circuit Court for the First Circuit of the State of Hawaii (the trial court) docketed the respondent's case as *State v. Gouveia*, Crim. No. 12-1-1474. The trial court issued both an oral ruling (Brief in Opposition Appendix (BIO App.) at 103–106) and a written order (Petitioners' Appendix (Pet. App.) at 76–83) ruling that double jeopardy did not bar a second trial because there was manifest necessity to declare a mistrial of the first trial. On appeal, Hawaii's Intermediate Court of Appeals affirmed in an unpublished opinion, *State v. Gouveia*, 348 P.3d 496, 2015 WL 2066780 (Haw. Ct. App. Apr. 30, 2015) (unpublished). The Hawaii Supreme Court also affirmed the trial court's declaration of a mistrial in a published opinion, *State v. Gouveia*, 384 P.3d 846 (Haw. 2016) (BIO App. at 107–123).

CONSTITUTIONAL PROVISION

"No person shall be … subject for the same offense to be twice put in jeopardy of life or limb[.]" U.S. Const. amend. V.

CASE STATEMENT

The petitioners' factual recitations mislead.

A jury completed a verdict form that acquitted the respondent of reckless manslaughter. BIO App. at 1; Haw. Rev. Stat. §707-702(1)(a). On a preprinted form denoted "Communication No. 3 from the Jury," the jury foreperson announced that the jury had ceased deliberating: "We reached a verdict," the note read. BIO App. at

2. In the spaces provided, the jury foreperson indicated that the note was written at "1420," 2:20 pm. BIO App. at 2. Four minutes later, at "1424," 2:24 pm, the jury foreperson penned another note, on a form denoted "Communication No. 2 from the Jury." BIO App. at 3. This second note conveyed concern that a trial spectator, whom the jury associated with the prosecution, might retaliate against jurors because of the verdict they had reached; the note read: "Concern: This morning on prosecutor's side of courtroom there was a man, shaved head, glaring and whistling at defendant. We have concern for our safety as jurors." BIO App. at 3. The petitioners belabor the numbering of the notes (Pet. at 5–6, 24–25, 31), but neglect to say the numbering does not reflect the order in which they were written. That elision creates the impression that the jury's concern preceded their verdict when, in fact, it did not. The temporal order of the notes—which indicates that the verdict form was executed first, then Note 3, then Note 2—and the fact that jurors were concerned about *retaliation* reflect that the jurors' retaliation concern was an effect of the jury's unanimous verdict, not its cause.

In response to the jurors' concern about retaliation, the trial court refused to "take" or even read their verdict and sealed it (the state's intermediate court of appeals later unsealed it). Pet. App. at 39, 41. Instead, the trial court and the parties questioned each juror about the spectator and his effect on the jury's deliberations. BIO App. at 4–84; Pet. App. at 34–37. Some jurors felt intimidated and were concerned about retaliation. Pet. App. at 35–36. Many asserted that some jurors discussed the spectator only after the jury had reached its verdict or near the end of

their deliberations, others recalled jurors discussing him earlier. Pet. App. at 35–36. Wherever the truth lies on that point, each juror unequivocally said the spectator's behavior and any concern about retaliation did not affect her or his vote to acquit. BIO App. at 6, 11, 18, 24–25, 34, 40–42, 45–46, 58, 64, 68, 74, 80–81; Pet. App. at 35–36, 40.

A lone juror, however, assented that it appeared to her that discussion about the spectator impacted other jurors' "decisions." BIO App. at 77; Pet. App. at 36. But that juror equivocated on when other jurors discussed the spectator, how long they discussed him, and how many participated in the discussion, "because," she explained, she "didn't take notice of what was going on." BIO App. at 72–76. Every other juror who was asked the same question (eight of them) contradicted her and unequivocally affirmed that he or she did *not* believe the spectator's behavior and concern about retaliation affected any other juror's vote to acquit the respondent. BIO App. at 7, 11, 18, 34–35, 41, 46, 59, 83. Each juror that was asked, moreover, similarly affirmed that the spectator's apparent association with the prosecution did not negatively affect her or his assessment of the prosecution's case. BIO App. at 26–27, 36, 41–42, 46.

Though the verdict remained unread, the trial court acknowledged that it was clear what the verdict was. BIO App. at 86 and 103; Pet. App. at 37; see also *Gouveia*, 384 P.3d at 851 n. 2 (BIO App. at 112) and at 858 n. 1 (Nakayama, J., dissenting) (BIO App. at 119). Asked by the trial court whether he wished to move for a mistrial, the respondent declined to do so and urged the court to accept the jury's verdict. BIO

App. at 86–87; Pet. App. at 37. The prosecution, seeking a second chance to convict, moved for a mistrial and urged the court to ground manifest necessity (and thereby evade a double jeopardy bar to retrial) on the lone juror's belief that other jurors' votes were affected by the spectator's intimidating behavior, BIO App. at 87–89, a belief she formed despite not "tak[ing] notice of what was going on," BIO App. at 75.

The trial court believed that the verdict was tainted if even a single juror feared retaliation from the spectator:

> [D]on't you think it's per se an inappropriate extraneous circumstance that if the jurors have concerns for personal safety based on something they observed in the courtroom being done by somebody in the gallery, that if it entered their discussion and had an impact on any of them, that it would taint the verdict?

BIO App. at 90–91. The prosecution agreed. BIO App. at 91. The trial court's further remarks (to which respondent's counsel assented) indicated that it had already decided that "[t]here's no other remedy short of a mistrial that's going to cure this or allow us to take the verdict," because the jury had "reached a verdict already" and the court could not, consequently, continue the case or further instruct the jury. BIO App. at 95.

As noted, the trial court and the parties were aware that the verdict acquitted the respondent, but the trial court deemed the acquittal "immaterial." BIO App. at 103; Pet. App. at 37. Here is the trial court's oral ruling granting the prosecution's request for a mistrial:

> Well, it's pretty clear to the court what everybody thinks the verdict is based on your arguments and your motions and lack of such. I don't know that the verdict is. I honestly literally don't know what the verdict is. There's no way I could know. We haven't taken the verdict yet. And,

> anyway, I think it's immaterial. I think it's literally immaterial to this discussion, this issue in my ruling here. And it's a really, really, close ruling as far as I'm concerned. I think that's probably clear from what I've—you know, this discussion right now. I mean, really, it's difficult, very difficult, but of course nobody forced me.
>
> You know, the bottom line to me, and it's my decision, and as I say, Mr. Shigetomi [(respondent's trial counsel)], it could be proved wrong in the fullness of time, but I find it difficult, I really do, I find it difficult to really believe when I, you know, apply my reason and common sense to this[,] that at least some of these jurors have this, what strikes me as a really serious concern for their personal safety and it came up according to, at least as I count, four or five of them, it came up, was one of the first things, one of the first things, one of the first topics of discussion when they go back in the room and started deliberating the case. Somebody brought it up and they started talking about it. It frankly beggars my reason and common sense that it would have no bearing on the deliberations in this case and therefore the verdict.
>
> I'm going to grant the State's motion for mistrial. I'm going to find there's manifest necessity for such based on what I said and all the—and everything else that's been put on the record, including my questions to counsel.

BIO App. at 103–104; see also Pet. App. at 37.

The trial court subsequently filed a written order memorializing its oral ruling. Pet. App. at 38–40 (district court's summary) and at 76–83 (trial court's written order). The written order acknowledged that *each* juror affirmed that the spectator's conduct and any fear about his reaction to the verdict did not affect his or her verdict, but the court found that such remarks were "not credible," a finding the trial court purported to rest on the "plain language of Communication No. 2" and the "answers of the voir dire of each individual juror." Pet. App. at 39, 79. The court further found that fear of the spectator was not harmless because it "had an impact on the jurors' decisions." Pet. App. at 39–40, 80. The trial court, however, did not

identify what language in the note (which did not mention the verdict or the jury's deliberations), nor what responses during voir dire (all of which affirmed jurors' deliberations were not affected at all), nor what else in the totality of the circumstances (which reflected that jurors associated the spectator with the prosecution and some feared retaliation for reaching a verdict against the prosecution) supported the court's findings. Pet. App. at 76–83.

Instead, the trial court found that "at least some of the jurors were not credible" (yet, puzzlingly, also found that "they were not lying"), but did not specify which jurors were not credible. Pet. App. at 81. The trial judge, moreover, rested his vague adverse credibility determination on his own "reason and common sense," which "dictate[d] that the incident did have an effect on the deliberations [and] the impartiality of the jurors" and, accordingly, dictated that the jurors' retaliation concerns weren't harmless. Pet. App. at 81; BIO App. at 97, 103–104. The written order also reiterated the court's rulings that some jurors' fears rendered them partial, that their lack of impartiality necessarily "tainted [the] verdict," and that nothing short of a mistrial would do, because neither a continuance nor further instruction would cure the jury's lack of impartiality. Pet. App. at 82. Neither the court's oral remarks nor its written order, however, explained to which party jurors' fear made them partial. BIO App. at 103–104; Pet. App. at 76–83. Nor, for that matter, did either iteration of the court's ruling explain how a fear of *retaliation* from a *pro-prosecution* spectator engendered a bias and a verdict *against* the prosecution, instead of a verdict *for* the prosecution or, at the very least, jury deadlock, the only

two outcomes that would have appeased the spectator and prevented his feared retaliation. BIO App. at 103–104; Pet. App. at 76–83.

Before a second trial commenced, the respondent filed a motion to dismiss contending that double jeopardy barred the second trial. Pet. App. at 40. The trial court summarily denied that motion without explicating its rationale. Pet. App. at 40; D.Ct. ECF Doc. 13-3 at 178–179. On interlocutory appeal and after the case passed through Hawaii's intermediate appellate court, the Hawaii Supreme Court affirmed, holding that double jeopardy did not bar retrial. *Gouveia*, 384 P.3d at 852–857 (BIO App. at 113–118).

The Hawaii Supreme Court framed the issue as resting on a presumption it imported from a line of cases addressing a defendant's right to a fair trial by an impartial jury. *Gouveia*, 384 P.3d at 854 (BIO App. at 115) (parsing *State v. Napulou*, 936 P.2d 1297, 1303–1304 (Haw. Ct. App. 1997) (parsing *State v. Williamson*, 807 P.2d 593, 596 (Haw. 1991))). The predecessor cases recognized that when a trial court "determines that [an outside] influence is of a nature which could substantially prejudice the defendant's right to a fair trial, a rebuttable presumption of prejudice is raised." *Napulou*, 936 P.2d at 1303–1304 (quoting *Williamson*, 807 P.2d at 596). In respondent's case, however, the Hawaii Supreme Court elided the substantiality requirement and broadened the rule to include a right for the prosecution to an impartial jury: "a rebuttable presumption of prejudice is raised" whenever "circumstances arise that could influence the impartiality of the jury and thus affect

the ability to reach a fair result based on the evidence." *Gouveia*, 384 P.3d at 854 (BIO App. at 115).

The Hawaii Supreme Court further held that concern about the spectator presented a "possibility of an improper influence," which therefore "created a rebuttable presumption of prejudice" to the prosecution. *Gouveia*, 384 P.3d at 854–855 (BIO App. at 115–116). But *the respondent* failed to rebut that presumption by "disprov[ing]" the "possibility of improper influence" and showing that "the outside influence was not harmless beyond a reasonable doubt." *Gouveia*, 384 P.3d at 854–855 (BIO App. at 115–116). The Hawaii Supreme Court acknowledged that the respondent argued that each juror's affirmation that her or his verdict was not affected by the spectator demonstrated that the jury's impartiality was not influenced and rebutted the presumption of prejudice to the prosecution. *Gouveia*, 384 P.3d at 855 (BIO App. at 116). But the Hawaii Supreme Court failed to explain why such evidence did not suffice; instead, the Court merely dismissed it out of hand on the assertion that the respondent misunderstood "the applicable law." *Gouveia*, 384 P.3d at 855 (BIO App. at 116).

The Hawaii Supreme Court affirmed the trial court's ruling that no other alternative to a mistrial would provide the prosecution with a sufficient remedy, because "the jury reached a verdict" (which neither a continuance nor further instruction could undo) that was "already tainted." *Gouveia*, 384 P.3d at 856 (BIO App. at 117). Finally addressing the double jeopardy issue, the Hawaii Supreme Court tersely held (in one paragraph) that retrial wasn't barred because manifest

necessity justified the mistrial. *Gouveia*, 384 P.3d at 857 (BIO App. at 118). A dissenting justice recognized that concern about the spectator "arose because of the substance of the verdict reached by the jurors," *Gouveia*, 384 P.3d at 860 (BIO App. at 121), and that some jurors' fear of retaliation for acquitting the respondent could not have influenced their vote, *despite* that fear, to acquit him. *Gouveia*, 384 P.3d at 857–862 (BIO App. at 118–123) (Nakayama, J., dissenting). The dissenting justice, accordingly, would have held that there was no manifest necessity and that double jeopardy barred a second trial. *Gouveia*, 384 P.3d at 858–862 (BIO App. at 119–123) (Nakayama, J., dissenting).

Two additional things bear noting about the Hawaii Supreme Court's decision. The first is that all five justices of the Court recognized that the trial court and the parties were aware that the verdict acquitted the respondent, even though the verdict was not officially opened until the intermediate appellate court unsealed it. *Gouveia*, 384 P.3d at 851 n.2 (BIO App. at 112) ; id. at 858 n. 1 (BIO App. at 119) (Nakayama, J., dissenting). The second is that the Hawaii Supreme Court recognized that the respondent did not consent to a mistrial. *Gouveia*, 384 P.3d at 849, 851 (BIO App. at 110, 112); see also id. at 858 (BIO App. at 119) (Nakayama, J., dissenting) ("Gouveia did not consent to the mistrial"). That is another thing the petitioners are not entirely candid about, insofar as they suggest that he "agreed" to a mistrial. Pet. at 6 and at 27–28.

The respondent promptly sought a writ of habeas corpus from the federal district court (for the District of Hawaii) before retrial commenced. Pet. App. at 31–

32. He raised two arguments. First, he argued the jury's acquittal was sufficiently final (because they had concluded deliberating) to bar retrial. Pet. App. at 32. Second, he argued there was no manifest necessity to justify the mistrial. Pet. App. at 32. The petitioners argued (along with things they do not pursue before this Court) that the *Rooker-Feldman* doctrine precluded federal court review of the respondent's pretrial double jeopardy claim. Pet. App. at 45. The petitioners also argued that the jury's completed verdict form, acquitting the respondent, didn't count because the trial court did not "receive" it, Pet. App. at 56, and that the trial court's manifest necessity ruling was correct, see *Gouveia v. Espinda*, Case 1:17-cv-00021-SOM-KJM (D. Haw.), ECF Doc. 13-1 at PageID#s 136–143.

The district court ruled that §2241 vested it with jurisdiction because the respondent raised a constitutional claim and he was "in custody" due to his conditional pretrial release status.[1] Pet. App. at 42–45. The court ruled that the *Rooker-Feldman* doctrine did not apply to §2241. Pet. App. at 45–46. The court rejected the respondent's claim that the acquittal was final enough to trigger a

[1] The district court, in accord with Ninth Circuit precedent and the petitioners' own arguments before it, ruled that 28 USC §2254 did not apply to respondent because his custody (conditional pretrial release) was not "pursuant to the judgment of a State court," because there was no judgment of conviction "against him at all." Pet. App. at 42–43; see also *Dominguez v. Kernan*, 906 F.3d 1127, 1134–1138 (CA9 2018); *Harrison v. Gillespie*, 640 F.3d 888, 896 (CA9 2011) (en banc); *Wilson v. Belleque*, 554 F.3d 816, 821–824 (CA9 2009); *Stow v. Murashige*, 389 F.3d 880, 885 (CA9 2004). While the petitioners quibble with other aspects of *Stow* (particularly, *Stow*'s failure to "mention the *Rooker-Feldman* doctrine," Pet. at 18), they do not contest the Ninth Circuit's rule that §2254 does not apply to a state criminal defendant seeking pretrial review of a double jeopardy claim, nor do they contest the district court's ruling (Pet. at 17–18) that §2254 did not apply to the respondent.

double jeopardy bar. Pet. App. at 56–62. But the court agreed that there was no manifest necessity to justify a mistrial. Pet. App. at 62–74. The district court further agreed that "problems" pervaded the state courts' determination that fear of retaliation tainted the verdict. Pet. App. at 66–68.

But the district court chose to rest granting the writ on the ground that there were reasonable alternatives to declaring a mistrial, which readily would have assuaged the jurors' fears and ensured that the verdict was not tainted by them. Pet. App. at 68–74. Nothing, for example, prevented the trial court from reading the verdict to assess harmlessness. Pet. App. at 73. For another, nothing prevented the trial court (since the verdict wasn't, as the district court saw it, final) from assuring the jurors that the spectator would not be allowed to harm them and asking them to reconsider or confirm their verdict accordingly. Pet. App. at 73–74. In a subsequent order under Fed. R. Civ. P. 60(a), the district court clarified that its grant of the writ necessitated the lifting of respondent's pretrial release conditions. Pet. App. at 89.

On the petitioners' appeal, the Ninth Circuit affirmed the district court. Pet. App. at 1–30. The Ninth Circuit held *Rooker-Feldman* didn't touch §2241 habeas proceedings. Pet. App. at 8–15. While acknowledging that the state courts "suggested" the verdict was final, the Ninth Circuit nonetheless agreed with the district court that it wasn't and, accordingly, rejected the respondent's argument that the verdict barred retrial (the respondent's conditional cross-petition seeks review of this aspect of the Ninth Circuit's decision, in the event this Court grants certiorari on one or both of the petitioners' issues). Pet. App. at 26–27. But the Ninth Circuit also

agreed with the district court's ruling that there was no manifest necessity because there were alternatives to declaring a mistrial. Pet. App. at 22–29.

REASONS FOR DENYING THE PETITION

1. The petitioners' *Rooker-Feldman* argument is (to borrow from the Ninth Circuit) "transparently without merit." Pet. App. at 9. The *Rooker-Feldman* doctrine encapsulates this Court's construction of 28 USC §1257, a statute addressing this Court's appellate jurisdiction. Pertinent is the statute's directive that the judgment of the highest court of a State "may be reviewed by the Supreme Court." 28 USC §1257. The *Rooker-Feldman* doctrine recognizes that "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments," because §1257 mentions this Court as the only court having such appellate jurisdiction. *Lance v. Dennis*, 546 U.S. 459, 463 (2006).

This Court has applied the doctrine all of "twice," *Exxon Mobile Corp. v. Saudi Basic Industries Corp*., 544 U.S. 280, 283 (2005), in the two cases giving the doctrine its name, *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923), and *District Court of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Instead of broadly applying it, this Court "tend[s] to emphasize the narrowness" of the doctrine. *Lance*, 546 U.S. at 464. This Court, moreover, hasn't thought to apply it to bar a state prisoner from seeking a writ of habeas corpus from a federal court. And *Exxon Mobile* is, correctly, understood to have "interred the so-called '*Rooker-Feldman* doctrine,'" *Lance*, 546 U.S. at 468 (Stevens, J., dissenting), and given it "a decent

burial" in its final "resting place," *Marshall v. Marshall*, 547 U.S. 293, 318 (2006) (Stevens, J., concurring). This case gives this Court no reason to exhume it.

The *Rooker-Feldman* doctrine does not "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court." *Exxon Mobile*, 544 U.S. at 293. Nor does the doctrine preclude Congress from "explicitly empower[ing] district courts to oversee certain state-court judgments," such as it has, "most notably, in authorizing federal habeas review of state prisoners' petitions." *Exxon Mobile*, 544 U.S. at 282 n. 8 (citing 28 USC §2254(a)). The petitioners latch onto *Exxon Mobile*'s citation to §2254—but entirely overlook the illustrative, non-exhaustive "most notably" bit—to say that §2254 is the *only* statute vesting a federal district court with jurisdiction to review a state criminal defendant's habeas claim. Pet. at 13–19. The petitioners don't explain why §2241 is not *another* "notable" example of Congress explicitly authorizing district court review of state court proceedings, whenever a State has a petitioner in custody unconstitutionally.[2] The petitioners' argument, moreover, fails to acknowledge precedent delineating the relationship between §2241 and §2254.

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[2] The district court ruled that the respondent's conditional pretrial release sufficed to establish §2241's custody requirement. Pet. App. at 43–44. The petitioners mention that the respondent is no longer subject to conditional pretrial release and is not presently in custody, Pet. at i, but do not appear to contest the district court's ruling that conditional pretrial release suffices to establish §2241 custody. In any event, what matters is whether the respondent was in custody at the time he filed his §2241 habeas petition, not that he ceased to be once the district court granted the writ; granting the writ does not moot, or otherwise "defeat," further review, in the circuit courts or this Court, of the district court's ruling. See *Carafas v. LaVallee*, 391 U.S. 234, 238–239 (1968).

Section 2241 vests a district court with original jurisdiction to grant the writ of habeas corpus to anyone being held (by anyone else) in unconstitutional custody. 28 USC §2241(a) "[w]rits of habeas corpus may be granted by … the district courts") and §2241(c) ("[t]he writ of habeas corpus shall not extend to a prisoner unless … [h]e is in custody in violation of the Constitution"); *United States v. Hayman*, 342 U.S. 205, 212 & n. 11 (1952) (under §2241, "United States District Courts have jurisdiction to determine whether a prisoner has been deprived of liberty in violation of constitutional rights"); see also, e.g., *Rasul v. Bush*, 542 U.S. 466, 473–474 (2004) (reaffirming the point and tracing the common law, constitutional, and statutory history of the writ). Section 2254, on the other hand, does not grant original jurisdiction, but enacts a *limitation* on §2241's general grant of original habeas jurisdiction, which adheres only when the habeas petitioner's custody derives specifically from a state court judgment. *Felker v. Turpin*, 518 U.S. 651, 662 (1996) ("grant[ing] habeas relief to state prisoners is limited by §2254, which specifies the conditions under which such relief may be granted to 'a person in custody pursuant to the judgment of a State court"); see also, e.g., *Dominguez*, 906 F.3d at 1134–1138 (collecting cases defining the relationship between §2241 and §2254).

When custody derives from a state court's final judgment, §2241 grants jurisdiction and §2254 imposes various "limitations" on granting the writ, "limitations" that seek, specifically, to promote respect for the finality of state court judgments. *Shoop v. Hill*, 139 S.Ct. 504, 506 (2019); see also *Duncan v. Walker*, 533 U.S. 167, 176 (2001) (recognizing types of state court judgments—judgments of

conviction, judgments of civil commitment, judgments of contempt—that satisfy §2254's custody requirement). But when custody does *not*, as here, derive from a state court's final judgment, §2241 still vests jurisdiction but §2254's limitations do not apply, because §2241's broad custody requirement (requiring only unconstitutional custody) is met but §2254's more narrow custody requirement (requiring custody pursuant to a final judgment) isn't. "[T]he general grant of habeas authority in §2241 is," as the Ninth Circuit recognizes, "available for challenges by a state prisoner who is not in custody pursuant to a state court judgment—for example, a defendant in pre-trial detention or awaiting extradition." *Dominguez*, 906 F.3d at 1135. The *Rooker-Feldman* doctrine, an interpretation of a statute addressing *appellate* jurisdiction, has nothing to do with §2241's vesting of *original* jurisdiction in federal courts to grant the writ of habeas corpus to anyone in unconstitutional custody.

The Ninth Circuit is not alone in holding that "the *Rooker-Feldman* doctrine does not touch the writ of habeas corpus." *In re Gruntz*, 202 F.3d 1074, 1079 (CA9 2000) (en banc). The circuit courts that have addressed the issue similarly hold that the *Rooker-Feldman* doctrine does not apply in a §2241 proceeding. *Blake v. Papdakos*, 953 F.2d 68, 71 n. 2 (CA3 (1992) ("[t]he habeas corpus jurisdiction of the lower federal courts is a constitutionally authorized exception to the principle of *Rooker-Feldman*" (quoting *Sumner v. Mata*, 449 U.S. 539, 543–544 (1981), for the proposition that "even a single federal judge may overturn the judgment of the highest court of a State in adjudicating a petition for habeas corpus relief")); *Plyler v.*

Moore, 129 F.3d 728, 732 (CA4 1997) ("the *Rooker-Feldman* doctrine does not bar review of a ruling of a state court in habeas corpus proceedings"); *Matter of Reitnauer*, 152 F.3d 341, 343 n. 8 (CA5 1998) (section 2241 is an "exception" to the *Rooker-Feldman* doctrine); *Garry v. Geils*, 82 F.3d 1362, 1365 n. 4 (CA7 1996) (same; citing *Ritter v. Ross*, 992 F.2d 750, 753 (CA7 1993)); *Lynn v. McClain*, 12 Fed. Appx. 676, 678, 2001 WL 328672, **2 (CA10 Apr. 4, 2001) (unpublished) ("absent habeas jurisdiction, the *Rooker-Feldman* doctrine bar[s] federal review of [a] state civil judgment[]"). The petitioners have not cited to this Court any case that agrees with their expansive view of the *Rooker-Feldman* doctrine. Nor have they cited any case that agrees with their contention that the doctrine has, without this Court's notice, narrowed §2241's scope to preclude a federal district court from granting a writ of habeas corpus to a person whom the State has in its custody and intends to put on trial in violation of the Fifth Amendment's double jeopardy clause.

There is no circuit split on this issue. Those circuits that have reached the issue unanimously hold that the *Rooker-Feldman* doctrine does not affect §2241 habeas corpus proceedings. And so holding does not conflict with this Court's precedent; to the contrary, it accords with this Court's emphasis that the *Rooker-Feldman* doctrine is so narrow it has never been applied apart from the two cases giving the doctrine its name. *Lance*, 546 U.S. at 463–464; *Exxon Mobile*, 544 U.S. at 283. This Court's review is not warranted to *extend* a doctrine of appellate jurisdiction, which *Exxon Mobile* has already interred in its final resting place, to

limit a statute vesting federal courts with original jurisdiction to entertain the constitutionally-protected writ of habeas corpus.

2. Nor have the petitioners presented a compelling reason for this Court to correct the Ninth Circuit's holding that the trial court's declaration of a mistrial was not justified by manifest necessity. The Ninth Circuit reached the right result. And, contrary to the petitioners' reading, the Ninth Circuit's decision does not apply a disfavored inflexible rule in lieu of considering the totality of the circumstances.

Applicable law is "clearly established." *Renico v. Lett*, 559 U.S. 766, 773 (2010). "[T]rial judges may declare a mistrial 'whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity' for doing so." *Lett*, 559 U.S. at 773–774 (quoting *United States v. Perez*, 22 U.S. 579, 580 (1824)). The trial court in the present matter failed to take all the circumstances into consideration. Most notably, the trial judge failed to consider the verdict that the jury had reached; indeed, the trial court thought the verdict was "immaterial." BIO App. at 86, 103. Considering the fact that the jury acquitted the respondent, however, makes plain that some jurors' concern about retaliation from a spectator they associated with the prosecution did not affect their verdict—had it affected them, those jurors would have voted in favor of conviction, so as to avoid the retaliation they feared an acquittal would trigger. That the jury unanimously voted to acquit thus establishes that the spectator did not taint the jury's verdict and that there was no manifest necessity to declare a mistrial.

The petitioners' assertion that the trial court's ruling—that manifest necessity justified a mistrial because the verdict was tainted—was a sound exercise of the court's discretion is, moreover, demonstrably incorrect. The trial judge rested his ruling on his personal view that "reason and common sense dictate[d]" that the spectator's behavior had "an effect on the deliberations[.]" Pet. App. at 81. The problem, as the Ninth Circuit correctly noted (see Pet. App. at 24), is that the record does not provide any support for that assertion. Each juror indicated that her or his vote to acquit was not affected by the spectator's behavior or concern about retaliation (see BIO App. at 6, 11, 18, 24–25, 34, 40–42, 45–46, 58, 64, 68, 74, 80–81), and the trial court did not identify anything in the record or in any juror's demeanor that belied those assertions of impartiality. Nor, for that matter, did the court articulate the train of "reason and common sense" that supported inferring that some jurors' fear that acquitting the respondent would lead to retaliation prompted them to acquit the respondent.

The Ninth Circuit, finally, did not apply a disfavored, inflexible rule of some sort. Instead, the Ninth Circuit considered the totality of the circumstances. Pet. App. at 16–22 (setting forth applicable law), 22–29 (assessing "all the[] circumstances"). True enough, some of those circumstances honed in on the trial court's failure to consider reasonable alternatives to declaring a mistrial, instead of "subjecting Gouveia to an entire second trial even though the jury had reached a verdict (and one probably in his favor)." Pet. App. at 25 and, generally, at 22–29. But members of this Court have recognized that "standard trial-court guidelines" direct

courts to consider reasonable alternatives when assessing manifest necessity to declare a mistrial. *Lett*, 559 U.S. at 791 & n. 15 (Stevens, J., dissenting, joined by JJ. Sotomayor and Breyer). And circuit courts agree that such a factor is "central" to reviewing a trial court's manifest necessity ruling, especially where a mistrial is declared for a reason other than jury deadlock (here the jury reached a verdict) and, at the prosecution's request for a "second bite at the apple." *Seay v. Cannon*, 927 F.3d 776, 783–784 (CA4 2019); see also, e.g., *United States v. Garske*, 939 F.3d 321, 334 (CA1 2019); *United States v. Razmilovic*, 507 F.3d 130, 139–140 (CA2 2007); *United States v. Rivera*, 384 F.3d 49, 56 (CA3 2004) ("a mistrial must not be declared without prudent consideration of reasonable alternatives"); *United States v. Fisher*, 624 F.3d 713, 722 (CA5 2010); *Walls v. Konteh*, 490 F.3d 432, 436 (CA6 2007); *Fenstermaker v. Halvorson*, 920 F.3d 536, 541 (CA8 2019) ("[w]hile there is no 'mechanical formula' a reviewing court should use, see [*Illinois v. Somerville*, 410 U.S. 458, 462 (1973)], we are particularly concerned with 'whether less drastic alternatives were available' to the trial court than declaring a mistrial" (quoting *Long v. Humphrey*, 184 F.3d 758, 761 (CA8 1999))); *Walck v. Edmondson*, 472 F.3d 1227, 1240 (CA10 2007); *United States v. Scott*, 613 Fed. Appx. 873, 875 (CA11 June 3, 2015) (unpublished) ("[a]n important consideration … 'is whether the trial court carefully considered the alternatives' (quoting *United States v. Bradley*, 905 F.2d 1482, 1488 (CA11 1990))). The petitioners' assertion that the Ninth Circuit erred by considering alternatives to declaring a mistrial is, accordingly, incorrect.

At bottom, all the petitioners seek on this point is error correction on an error that the Ninth Circuit did not, in fact, commit. And even if the Ninth Circuit's manifest necessity holding were flawed in some respect (which it isn't), this Court's review would still be unnecessary, because the outcome of this case—double jeopardy bars retrial—should remain the same for the reasons advanced in the respondent's conditional cross-petition for a writ of certiorari: because the jury had finished deliberating and acquitted the respondent.

CONCLUSION

This Court should deny the petition for a writ of certiorari. The circuits correctly agree that the *Rooker-Feldman* doctrine does not preclude granting a state criminal defendant a writ of habeas corpus under 28 USC §2241. And the Ninth Circuit correctly held that the state trial court lacked a manifest necessity to declare a mistrial.

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