NO. 19-_____

In the Supreme Court of the United States

WILLIAM CASTRO,

Petitioner,

v.

R. FRED LEWIS, BARBARA J. PARIENTE, JORGE LABARGA, PEGGY A. QUINCE, CHARLES T. CANADY, RICKY POLSTON, C. ALAN LAWSON, AND THOMAS ARTHUR POBJECKY,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Florida Supreme Court refused to address the merits of federal constitutional claims raised in Petitioner's post-judgment motion to vacate arising from newly-discovered evidence of misconduct committed prior to that Court's judgment permanently denying Petitioner admission to the Florida Bar. After Petitioner's federal district court complaint alleging those claims pursuant to 42 U.S.C. § 1983 was dismissed for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine, the Eleventh Circuit affirmed the district court's orders, concluding that Petitioner had a reasonable opportunity to raise those claims at the Florida Supreme Court, both before that Court issued its original judgment and subsequently in his post-appeal motion to vacate that judgment.

Presently, the uneven application of the *Rooker-Feldman* doctrine by the lower federal courts undermines litigants' due process right to have their federal constitutional claims adjudicated in either a state or federal forum. To resolve this conflict among the circuits, Petitioner presents the following issue for review:

> Whether the *Rooker-Feldman* doctrine bars subject-matter jurisdiction in a federal district court over federal constitutional claims filed pursuant to 42 U.S.C. § 1983 where: a) the underlying misconduct was unknown to Petitioner prior to the state court's original judgment and did not figure in that state court's decision; and b) Petitioner's post-judgment motion to vacate raising those claims was not decided on the merits by the state court.

PARTIES TO THE PROCEEDING

Petitioner

- William Castro, an individual, was the Appellant in the circuit court of appeals and is the Petitioner herein.

Respondents

- Respondents Jorge Labarga, R. Fred Lewis, Barbara J. Pariente, Peggy A. Quince, Charles T. Canady, Ricky Polston, and C. Alan Lawson, in their official capacities as Justices of the Florida Supreme Court, were Appellees in the circuit court of appeals and are Respondents herein. Thomas Arthur Pobjecky, an individual, was an Appellee in the circuit court of appeals and a Respondent herein.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a private individual and is not required to make the disclosure required by Rule 29.6.

LIST OF PROCEEDINGS

United States Court of Appeals for the Eleventh Circuit;

Case number 17-15638;

William Castro, Appellant, v. R. Fred Lewis, Barbara J. Pariente, Jorge Labarga, Peggy A. Quince, Charles T. Canady, Ricky Polston, C. Alan Lawson, and Thomas Arthur Pobjecky, Appellees;

District court's orders dismissing complaint under the Rooker-Feldman doctrine affirmed on June 17, 2019;

Petition for Rehearing en banc and panel rehearing denied on September 20, 2019;

United States District Court for the Northern District of Florida;

Case number 4:17cv236-MW/CAS;

William Castro, Petitioner, v. Jorge Labarga, R. Fred Lewis, Barbara J. Pariente, Peggy A. Quince, Charles T. Canady, Ricky Polston, and C. Alan Lawson, In Their Official Capacities As Justices Of The Florida Supreme Court, and Thomas Arthur Pobjecky, In His Individual Capacity, Defendants;

Final judgment entered in favor of Defendant Thomas Arthur Pobjecky on January 4, 2018;

Amended Final Judgment entered in favor of Defendant Justices on March 13, 2018

Florida Supreme Court;
Case number SC10-2439;
Florida Board of Bar Examiner re William Castro;
Judgment entered February 9, 2012;
Rehearing denied April 26, 2012

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JUDICIAL RULES

PETITION FOR A WRIT OF CERTIORARI

William Castro, Petitioner, respectfully requests that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Eleventh Circuit, entered in the above-entitled case on July 17, 2019.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit, dated July 17, 2019, is and reprinted in the Appendix to this Petition at App.1a-14a.

The order of the United States District Court for the Northern District of Florida, Tallahassee Division, granting Defendants' motion to dismiss, dated October 31, 2017, is included below at App.23a-28a. The district court entered corrections to this order on January 4, 2018 and March 12, 2018, which are included below at App.20a-22a and App.18a-19a, respectively.

STATEMENT OF BASIS FOR JURISDICTION

On September 20, 2019, the United States Court of Appeals for the Eleventh Circuit issued an order denying a timely filed petition for rehearing and rehearing *en banc*, which is included below at App.15a-16a. This petition for writ of certiorari is filed within 90 days of that date.

The jurisdiction of this Court to review on a writ of certiorari the Eleventh Circuit's judgment is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

- **U.S. Const. amend. XIV**

  The 14th Amendment to the United States Constitution provides in relevant part:

  "No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

- **28 U.S.C. § 1254**

  § 1254 provides in relevant part:

  Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . .

- **28 U.S.C. § 1331 states:**

  > The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

- **28 U.S.C. § 1343(a) states, in part:**

  > (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
  >
  > (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
  >
  > (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

- **28 U.S.C. § 2201(a) provides:**

  > In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as

defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

- 42 U.S.C. § 1983

  § 1983 provides in pertinent part as follows:

  Every person who, under color of any statute . . . of any State, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in . . . suit in equity, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE[1]

After serving a ten-year disbarment sanction, Petitioner applied for readmission to The Florida Bar ("Bar") in 2007. (App.41a). At a public hearing conducted in 2010 before a panel of the Florida Board of Bar Examiners ("Board"), which is the Florida Supreme Court's agency responsible for investigating the character and fitness of applicants to the Bar and making admission recommendations to that Court, Petitioner presented overwhelming evidence of rehabilitation, including the performance of over 13,000 community service hours and the supporting recommendations of 32 current or former judges and over 100 attorneys. (App.41a-42a). The Board did not present any evidence contesting or objecting to Petitioner's evidence of rehabilitation or current moral character from any source or which adversely reflected upon how Petitioner had conducted himself for the previous 19 years. (App.42a).

One week after that hearing, the Board sent Petitioner a letter announcing its decision denying his application with a right to reapply after two years. (App.43a, 93a). However, three months later, the Board sent Petitioner its Findings of Fact, Conclusions of Law and Recommendation and a letter revealing a different recommendation—permanent

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[1] This statement sets forth the events that led to the filing of this Petition and is based on the facts alleged in the complaint filed by Petitioner in the district court, district court orders and the Eleventh Circuit's Panel decision.

exclusion. (App.44a, 95a, 114a). To prepare for a possible appeal from the Board's two-year denial decision, Petitioner obtained a compact disc ("CD") which purportedly contained the Board's hearing transcripts from a court-reporting firm. (App.44a). However, since Petitioner and his counsel had already begun making corrections from transcripts provided by the Board, Petitioner did not inspect the CD's contents and placed it in an accordion file with copies of other documents presented at the formal hearing. *Id.*

Although the Florida Supreme Court found that Petitioner had "engaged in thousands of hours of community service, benefiting both his church and the legal community as a whole, in an effort to show his rehabilitation", (App.47a, 87a-88a), it affirmed in 2012 the Board's recommendation permanently denying Petitioner's admission to the Bar. (App.46a). *See Florida Board of Bar Examiners re Castro*, 87 So.3d 699, 702 (Fla. 2012). (App.47a).

Petitioner then filed a Petition for Writ of Certiorari to the Florida Supreme Court at the United States Supreme Court on July 25, 2012, raising the following question for review:

> Whether Castro's substantive due process rights under the Fourteenth Amendment to the United States Constitution and principles of fundamental fairness were violated when the Florida Supreme Court disregarded its own final judgment disbarring Castro for 10 years by later permanently denying his readmission based solely on the same misconduct which formed the basis of the original dis-

> barment judgment and without considering any evidence of rehabilitation.

(App.49a). This Court denied certiorari on October 1, 2012. (App.50a). *See Castro v. Florida Board of Bar Examiners*, 133 S.Ct. 339 (2012) (mem.) (docket number 12-124). (App.125a).

Two days later, Petitioner, while reviewing the boxes and files containing documents relating to his Bar application to decide which to retain or discard, came across the CD he received from the court reporting firm. (App.50a). Upon viewing the CD's contents, Petitioner discovered that not only did it contain the formal hearing transcripts but a transcript of the Board panel's confidential post-deliberations report of its collective admission recommendation. *Id.* Petitioner had no reason to know before inserting the CD into the computer that it contained this confidential transcript of the Board formal hearing panel's post-deliberations record announcement of its collective denial recommendation for a two-year disqualification period before Petitioner could reapply by a 3-2 vote. (App.51a). Since neither Petitioner nor the Florida Supreme Court were aware of the underlying misconduct before the latter issued its decision, (App.53a), it was not raised by Petitioner and did not figure in that Court's decision.

Since it was apparent that the panel's original reported two-year denial recommendation had been changed, Petitioner filed a motion to vacate the Florida Supreme Court's judgment and requested an evidentiary hearing upon the allegations concerning the Board's actions, at which evidence and argument could be received to determine how the initial two-

year denial recommendation was changed and who was involved or knew about it. (App.51a-52a). Petitioner only learned that the Findings Worksheet showed that the Board panel had decided upon a two-year period of disqualification, the Board's Executive Director conducted *ex parte*, post-deliberation communications with two out of the five panelists and its General Counsel had drafted the altered recommendation which omitted any mention of the panel's actual decision, after the Board disclosed that information to his counsel subsequent to the filing of the motion to vacate. (App.52a-59a).

Although Petitioner's post-judgment discovery and presentation of confidential court documents demonstrated the existence of "conscious-shocking" misconduct,[2] the Florida Supreme Court on October

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[2] In response to Petitioner's post-judgment filings, the Florida Supreme Court issued the following order to show cause on May 6, 2013:

> William Castro has filed "Petitioner's Motion Ex Parte Motion for Leave of Court to File Motion to Vacate Judgment" and "Petitioner's Verified Motion to Vacate Judgment Based on Fraud, Misrepresentation or Other Misconduct Committed by the Florida Board of Bar Examiners" in which he asks the Court to reopen this closed case and consider additional information. This case was final on April 26, 2012, when the Court denied Castro's motion for rehearing of its February 9, 2012, order approving the Florida Board of Bar Examiners' findings of fact, conclusions of law, and recommendation that Castro be permanently denied admission to The Florida Bar. ***Castro has provided no authority in his motion or any other filing setting forth the authority upon which this Court can grant leave to Castro to file a motion to vacate the final disposition of the Court and reopen the case for***

18, 2013 summarily dismissed as "unauthorized" Petitioner's post-appeal motion to vacate its judgment permanently denying his admission to the Bar. (App.61a, 126a). In doing so, that Court refused to adjudicate, much less consider, the merits of Petitioner's federal constitutional claims based on the underlying misconduct committed in the procurement of its original judgment. (App.61a).

Petitioner filed a Petition for Writ of Certiorari to the Florida Supreme Court at the United States Supreme Court on January 16, 2014, raising the following question for review:

> Whether the Florida Supreme Court violated Castro's procedural and substantive due process rights under the Fourteenth Amendment to the United States Constitution by summarily dismissing Castro's motion to vacate its judgment permanently denying him admission to The Florida Bar or, in the alternative, conduct an evidentiary hearing, in light of proof that the Florida Board of Bar Examiners fraudulently changed a hearing panel's decision.

(App.61a-62a). This Court denied certiorari on March 31, 2014. (App.62a). *See Castro v. Florida Board of*

> ***consideration of new information***. William Castro is therefore ordered to show cause by May 22, 2013, why his motion should not be dismissed as unauthorized. The Florida Board of Bar Examiners may serve a reply on or before June 3, 2013.

(App.119a) (emphasis added).

Bar Examiners, 134 S.Ct. 1761 (2014) (mem.) (docket number 13-857). (App.29a).[3]

Petitioner then filed a complaint on February 24, 2017 in the federal district court against the Justices of the Florida Supreme Court and the former Board General Counsel alleging violations of his federal constitutional rights pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 2201 and 42 U.S.C. § 1983. (App.30a). It sought: 1) compensatory and punitive damages against the former General Counsel in his individual capacity based on egregious misconduct[4] committed by him in the procurement of a

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[3] This Court's denial of Petitioner's petition was not a ruling on the merits of Petitioner's federal claims and would not, in any event, be considered part of the process of the appellate review of the original judgment. Had this Court granted certiorari, the merits of Petitioner's underlying federal claims concerning the General Counsel's misconduct would not have been adjudicated; the only issue before this Court was whether the Florida Supreme Court erred in not providing Petitioner with an evidentiary hearing to address those federal claims. Thus, any possible relief from this Court would have been limited to remanding the case to the Florida Supreme Court to address the merits of those claims.

[4] The complaint alleged that the General Counsel, knowing that

> the Board's formal hearing panel had decided by a 3-2 vote to deny Plaintiff Castro's application for readmission to The Florida Bar with a two-year waiting period to reapply; and . . . the version of Florida Bar Admission Rule 3-23.6(d) then in effect precluded the Board from recommending any denial period greater than 5 years, . . .
>
> a) changed the Board hearing panel's decision from a two-year denial recommendation to permanent denial without notice to Plaintiff Castro;

Florida Supreme Court judgment permanently denying Petitioner admission to The Florida Bar which violated Petitioner's federal constitutional substantive and procedural due process rights (Counts I-III), his constitutional right of access to courts (Count IV), and a state common law fraud claim. (App.37a-38a, 64a-77a, 79a-81a); and 2) declaratory and prospective injunctive relief against the Justices in their official capacities as Florida Supreme Court Justices "in connection with their present and prospective unlawful enforcement of [the] judgment [permanently denying his admission to The Florida Bar], which violates, and will continue to violate, . . . Petitioner's federal civil rights." (App.36a). The district court dismissed Petitioner's complaint, in part, for lack of subject

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b) helped [the] Executive Director of the Florida Board of Bar Examiners, prepare an *ex parte* communication to two of the five formal hearing panel members concerning the recommendation the collective panel had made and requesting approval of the fraudulent recommendation he drafted;

c) submitted that fraudulently-altered Board findings and recommendation to the Florida Supreme Court for review; and

d) misrepresented to the Florida Supreme Court in an appellate answer brief that the Board had recommended Plaintiff Castro's permanent exclusion from The Florida Bar, and then advocated for approval of that fraudulently-altered permanent denial recommendation.

(App.34a).

matter jurisdiction under the *Rooker-Feldman* doctrine.[5] (App.17a, 18a, 20a, 23a).

On June 17, 2019, the Eleventh Circuit affirmed the district court's orders under the *Rooker-Feldman* doctrine, erroneously holding that Petitioner had a reasonable opportunity to raise those federal constitutional claims at the Florida Supreme Court, both before that Court issued its original judgment and subsequently pursuant to Petitioner's motion to vacate that judgment. *See Castro v. Lewis*, 777 Fed.Appx. 401, 404-407 (11th Cir. 2019). (App.1a). On September 20, 2019, the Eleventh Circuit denied Petitioner's petition for rehearing *en banc* and panel rehearing. (App.15a).

REASONS FOR ALLOWING THE WRIT

I. THE ELEVENTH CIRCUIT PANEL DECISION'S APPLICATION OF THE "REASONABLE OPPORTUNITY" EXCEPTION TO THE *ROOKER-FELDMAN* DOCTRINE IS IN CONFLICT WITH OTHER CIRCUITS

Finding that "the doctrine ha[d] sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases", this Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280 (2005) held that *Rooker-Feldman* was "confined to

[5] The doctrine has its origins in two United States Supreme Court cases: *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

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. Since *Rooker–Feldman* had been interpreted too broadly by the lower federal courts and effectively used to abnegate federal court jurisdiction, this Court post-*Exxon* reiterated that *Rooker-Feldman* is a "narrow doctrine [which] applies only in 'limited circumstances' . . . where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court." *Lance v. Dennis*, 546 U.S. 459, 464, 466 (2006) (citation omitted); *Skinner v. Switzer,* 562 U.S. 521, 532 (2011); *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 644 n.3 (2002).

However, an issue that has caused conflict and confusion among the circuits and has not been addressed by this Court is whether *Rooker-Feldman* applies to bar subject-matter jurisdiction in a federal district court when a litigant had no reasonable opportunity to raise federal constitutional claims in the state court. The circuits are split on whether such an exception to *Rooker-Feldman* exists, and if so, what it means and how it is to be applied. Those that have adopted such an exception have further disagreed on whether that standard is satisfied by simply having had the opportunity to present those claims in the state court or whether an adjudication on the merits of the issues submitted to the state court for review is required. Thus, depending on which circuit a cause of action arose in a state court, *Rooker-Feldman* could be variably invoked to bar

original federal jurisdiction in a district court based on that circuit's adoption or interpretation of the "reasonable opportunity" standard. As a result, some circuits provide more protections for plaintiffs who have sought relief for federal constitutional violations in the state courts but were not provided a ruling on the merits of those claims, while other circuits bar federal district court jurisdiction altogether, irrespective whether those claims are raised.

Notwithstanding its failure to faithfully follow its own precedent in holding that Petitioner had a reasonable opportunity to raise his federal claims before both the original state court judgment was issued (despite being unaware of the underlying misconduct committed by the state court's General Counsel) and later pursuant to Petitioner's motion to vacate that judgment (which the Panel decision concluded that the Florida Supreme Court rejected Petitioner's fraud claims but actually only dismissed it as "unauthorized"), the Eleventh Circuit has interpreted the "reasonable opportunity to raise" exception to the *Rooker-Feldman* doctrine to mean that the issue presented at the prior state court proceeding by a litigant must have resulted in a final adjudication on the merits before subject-matter jurisdiction in the federal district court may be barred. The Third and Eighth Circuits are in step with the Eleventh Circuit's explication. *See Gulla v. North Strabane Township,* 146 F.3d 168 (3rd Cir. 1998)[6] and *Simes v. Huckabee*, 354 F.3d 823 (8th Cir. 2004).[7]

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6 [W]e conclude that the Gullas are not precluded from bringing their federal claims because the state court could not and did not adjudicate the merits of their

Five circuits have taken a middle of the road position regarding the "reasonable opportunity" to raise or litigate exception to the *Rooker-Feldman* doctrine, barring subject-matter jurisdiction in the lower federal courts only if a litigant had a reasonable opportunity to present his federal claims to the state court but not requiring the state court to consider, much less, adjudicate the merits of those claims. *See Sheehan v. Marr*, 207 F.3d 35, 40-41(1st Cir. 2000); *Hachamovitch v. DeBuono*, 159 F.3d 687, 695 (2nd Cir. 1998); *Brown & Root, Inc. v. Breckinridge*, 211 F.3d 194, 201-202 (4th Cir. 2000); *Mapp Construction, LLC v. M&R Drywall, Inc.*, 294 Fed.Appx. 89, 91 (5th

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> constitutional claims. Rather, the state court noted that the Gullas lacked standing to raise their constitutional claims . . . Since the Gullas could not obtain an adjudication of their claims in state court, they are not precluded from raising their constitutional claims in the federal forum.

Id. at 173. *See also Whiteford v. Reed,* 155 F.3d 671, 674 (3rd Cir. 1998) (holding that *Rooker–Feldman* did not bar jurisdiction over plaintiff's constitutional claims that had been rejected on procedural grounds by the state court).

7 > [W]e hold the *Rooker–Feldman* doctrine does not bar federal claims brought in federal court when a state court previously presented with the same claims declined to reach their merits, we emphasize a state court need not undertake extensive analysis of every federal claim before it, regardless of merit, in order for *Rooker–Feldman* to bar a later federal suit. A state court need only indicate it has considered, reached the merits, and rejected the federal claims in order for that doctrine to apply.

Id. at 830.

Cir. 2008); and *Brokaw v. Weaver*, 305 F.3d 660, 668 (7th Cir. 2002).

At the other end of the spectrum, the Sixth, Ninth and Tenth Circuits have declined to adopt any version of the "reasonable opportunity" exception to the *Rooker-Feldman* doctrine, not requiring that a litigant have been afforded a full and fair opportunity to present their constitutional claims to a state court in order to bar federal district court jurisdiction. *See Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir. 2007); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900-901 (9th Cir. 2003); *Kenmen Engineering v. City of Union,* 314 F.3d 468, 478 (10th Cir. 2002), *abrogated in part on other grounds by Exxon Mobil Corp.,* 544 U.S. 280 (2005), and by *Lance v. Dennis,* 546 U.S. 459 (2006).

This inconsistent treatment among the circuits, which has the effect of unjustly depriving most civil rights litigants across the country of jurisdiction in *any* judicial forum, state or federal, to redress their federal constitutional claims on the merits, justifies this Court's immediate review under Supreme Court Rules 10(a) and 10(c).

II. THE ELEVENTH CIRCUIT PANEL'S APPLICATION OF THE *ROOKER-FELDMAN* DOCTRINE CONFLICTS WITH ITS OWN PRECEDENT

The Eleventh Circuit's Panel decision conflicts with longstanding circuit precedent in several ways. First, the Panel decision ignored the Eleventh Circuit's prior holding that "the *Rooker–Feldman* doctrine only precludes federal court review of claims the plaintiff has a reasonable opportunity of raising ***before*** the

final state court judgment is entered." *Molina v. Aurora Loan Services, Inc.*, 635 Fed.Appx. 618, 622 (11th Cir. 2015) (citing *Wood v. Orange County*, 715 F.2d 1543, 1546 (11th Cir. 1983)) (emphasis added). *Cf. Target Media Partners v. Specialty Marketing Corporation*, 881 F.3d 1279, 1287 (11th Cir. 2018) ("An allegedly tortious act occurring long after the state court rendered its judgment cannot be barred by *Rooker–Feldman* because there was no opportunity to complain about the allegedly injurious act in the state court proceedings.").

In *Wood v. Orange County*, *supr*a, the Eleventh Circuit recognized that

> [w]here [a] plaintiff has had no such opportunity, he cannot fairly be said to have "failed" to raise the issue. Moreover, ***an issue that a plaintiff had no reasonable opportunity to raise cannot properly be regarded as part of the state case***. In *Feldman*'s language, the issue that such a plaintiff asks the federal court to decide is not "inextricably intertwined" with the state court's judgment.[8] As a result, the federal district court's jurisdiction does not trench on the exclusive authority of the Supreme Court to review state court decisions for errors of federal law. Stating it another way, because the issue did not

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[8] *Cf. Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997) (When a plaintiff has not been afforded a reasonable opportunity to raise his federal claim in state proceedings, "this court considers 'that the federal claim [i]s not "inextricably intertwined" with the state court's judgment.'") (quoting *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996)).

> figure, and could not reasonably have figured, in the state court's decision, the district court has "original" jurisdiction over the issue as required by 28 U.S.C. § 1331.

Id. at 1547 (emphasis added). While the Eleventh Circuit's *de novo* review required it to "accept as true all material allegations of the complaint, and . . . construe the complaint in [Petitioner's] favor. . . ." *Warth v. Seldin*, 422 U.S. 490, 501 (1975), and the unchallenged allegations in Petitioner's federal district court complaint stated that he was unaware of the underlying misconduct committed by the Board's General Counsel in the drafting of a fraudulent admission recommendation before the Florida Supreme Court issued its original decision (and that is why the federal constitutional claims were not raised by Petitioner and did not figure in that Court's decision), the Panel decision arrived at the unsubstantiated conclusion that

> before Castro appeared in the Florida Supreme Court the first time around, he knew that the Board had conducted disbarment proceedings, he had access to all of the information forming the basis of his instant claims, and, at the very least, he had a reasonable opportunity to assert these claims in state court, even though he failed to do so.

Castro v. Lewis, 777 Fed.Appx. 401, 407 (11th Cir. 2019). (App.13a). Moreover, the Panel's decision's suggestion that because Petitioner was advised by the Board that the Panel had actually rendered a permanent denial recommendation, not for two-years

as he was originally noticed, that he "could have either sought more information from the Board, or reviewed the CD he already had in hand, which contained the additional information that formed the basis for his claims in federal court", (App.12a), presupposed that Petitioner or his counsel had any reason to believe that the Board had done anything wrong.

To the contrary, the complaint averred that Petitioner's "counsel, with no reason to believe that anything unlawful or irregular had occurred, surmised that the difference between the findings/decision contained in the Notice of Action and the Findings of Fact, Conclusions of Law, and Recommendation was attributable to a reporting error by the Board's staff . . . ." (App.45a). While the Board should have advised Petitioner of the *ex parte*, post-deliberations communications the Board's Executive Director and General Counsel had with panelists about their recommendation and how the different recommendation came about ***before*** that recommendation was submitted for review to the Florida Supreme Court and that Court issued its original decision, they failed to self-report their actions to Petitioner (knowing it would never be discovered by anyone due to the confidential nature of internal Board actions), (App.58a). As a result, Petitioner was precluded from challenging that misconduct with the Board and on direct appeal to the Florida Supreme Court.

Second, *Wood* also held that the *Rooker-Feldman* rationale does not apply to a post-judgment motion to vacate in state court because it is not considered "part of the process of appellate review of the original

judgment, [even if a plaintiff] could have raised [his] claims in such proceedings." *Wood v. Orange County*, 715 F.2d at 1548. The Eleventh Circuit in *Wood* stated:

> The federal court may perform a role that a state court deciding a Rule 1.540[9] motion might also be able to perform. But the federal court is not usurping the role of a state appellate court because a state court ***deciding*** a Rule 1.540 motion does not act as an appellate court. The district court does not violate *Rooker*'s rationale by deciding plaintiffs' claims . . . . *Rooker* is not a requirement that a plaintiff exhaust all conceivable state remedies; it does not require that where possible he institute proceedings so that state courts can consider the plaintiff's federal claims in the first instance.

Wood v. Orange County, 715 F.2d at 1547 n. 2. (emphasis added). The Panel decision conflicts with *Wood* because it failed to distinguish between a direct attack on the original judgment and a motion to vacate that judgment which *Wood* held was not "part of the process of appellate review of the original judgment, [even if a plaintiff] could have raised [his] claims in such proceedings." *Wood v. Orange County*, 715 F.2d at 1548. In fact, Petitioner was not legally obligated

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[9] A motion filed thereunder "is not a substitute for appeal, and the court deciding such a motion does not act as an appellate court." *Wood v. Orange County*, 715 F.2d at 1548. Since "[p]roceedings surrounding Rule 1.540 are considered separate from those surrounding entry of the judgment[,] denial of [such] motion is . . . . appealable not as the decision of a reviewing court but as a separate judgment in its own right." *Id.*

to raise his post-judgment federal constitutional claims in any Florida court, and could have chosen to raise them by either 1) filing a motion to vacate the judgment at the Florida Supreme Court or 2) filing a complaint in a federal district court, because the Eleventh Circuit in *Wood* held that *Rooker-Feldman* did not bar a plaintiff from pursuing relief through either scenario if he did not have a reasonable opportunity to raise those federal claims ***before*** the original state court judgment was entered.

Thus, simply because Petitioner ***did*** file a motion to vacate that judgment does not change the fact that that motion could not be considered part of the appellate process of the original judgment, even if the Florida Supreme Court was found to have adjudicated the federal claims alleged in the motion to vacate on the merits. Nowhere does *Wood* suggest that a plaintiff forfeits or waives his right to litigate his state post-judgment federal claims in a federal district court if he first opts to file a motion to vacate that judgment in state court. While the Florida Supreme Court's summary dismissal of Petitioner's motion to vacate the judgment as "unauthorized" was clearly not on the merits, whether it was or not still would not make that Court's ruling part of the appellate process of the original judgment and thus bar original subject-matter jurisdiction in the district court over Petitioners federal claims under *Rooker-Feldman*.

Third, the Eleventh Circuit has also held that the *Rooker–Feldman* doctrine applies ***only*** where "the prior state court ruling was a final or conclusive judgment on the merits." *Nicholson v. Shafe,* 558 F.3d 1266, 1272 (11th Cir. 2009). *Cf. Streicher v. U.S.*

Bank National Association, 666 Fed.Appx. 844, 847 (11th Cir. 2016) (state court's dismissal of foreclosure action for lack of standing was not final adjudication on the merits); *Jones v. Commonwealth Land Title Insurance Company*, 459 Fed.Appx. 808, 810 (11th Cir. 2012) (*Rooker–Feldman* not preclude federal jurisdiction because "nothing in the record that indicates that there was a final or conclusive judgment on the merits in Jones's state court case"). Notwithstanding Eleventh Circuit precedent, the Panel decision's finding that the "Florida Supreme Court ***rejected*** Castro's argument alleging fraud in the drafting of the Board's recommendation," *Castro v. Lewis*, 777 Fed.Appx. at 404 (emphasis added) (App.8a), which signified that it was a ruling on the merits of Petitioner's federal claims, is belied by the Florida Supreme Court's order which shows that it simply ***refused*** to address Castro's federal claims.

> Petitioner's "Ex Parte Motion for Leave of Court to File Motion to Vacate Judgment and Index of Appendices Under Seal" filed in this Court on November 7, 2012, is hereby denied.
>
> Petitioner's "Verified Motion to Vacate Judgment Based on Fraud, Misrepresentation or Other Misconduct Committed by the Florida Board of Bar Examiners" filed in this Court on November 7, 2012, is hereby dismissed as unauthorized.

(App.126a). Since the Florida Supreme Court's ***dismissal*** of Petitioner's motion to vacate judgment as "unauthorized" did not determine, as a matter of law, that Petitioner was not entitled to the relief he

sought, it was not a final or conclusive judgment on the merits,[10] and thus, *Rooker-Feldman* could not be invoked to bar original jurisdiction in the federal district court. *Cf. Biddulph v. Mortham*, 89 F.2d 1491, 1495 n.1 (11th Cir. 1996) (although Florida Supreme Court previously denied Biddulph mandamus relief, *Rooker-Feldman* did not bar Biddulph from raising same federal claim raised at that Court because "state mandamus proceeding did not afford Biddulph the kind of 'reasonable opportunity' to raise his federal claim that would preclude [court's] independent review of that claim.").

The lack of direction from this Court on the application of the *Rooker-Feldman* doctrine to the viability of federal constitutional claims raised but not adjudicated on the merits in state court has led to conflicting and confusing decisions in the Eleventh Circuit. While the Eleventh Circuit has embraced the reasonable opportunity exception to the *Rooker-Feldman* doctrine to include that any issue presented in a previous state court proceeding must have been decided on the merits to bar subject-matter jurisdiction in a federal court, it's application has been uneven, especially in determining what constitutes a final or conclusive judgment on the merits of an issue. Unless and until this Court adopts such an exception to the *Rooker-Feldman* doctrine, state courts in the Eleventh Circuit, although not obli-

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[10] Instead, it was based on that Court's view that Petitioner had failed to provide any authority upon which it could "grant leave to Castro to file a motion to vacate the final disposition of the Court and reopen the case for consideration of new information." (App.119a).

gated to rule upon the merits of any federal constitutional claims presented to them, will be less prone to pass on adjudicating those questions, knowing that the federal district courts will later be less inclined to independently consider those previously-raised claims on the merits. Consequently, litigants will be denied a forum in the federal court with the same process and "reasonable opportunity" they should have received in the state court.[11] Which is what happened to Petitioner, and will continue to be how the *Rooker-Feldman* doctrine will be applied in the Eleventh Circuit to other litigants who, in the first instance, raise but do not obtain a ruling on the merits of the federal constitutional claims from the state court, only later to be barred from having those claims adjudicated in the federal court.

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11 We have noted the *Rooker-Feldman* doctrine is founded upon principles of federalism. However, the district court's holding in this case extends such doctrine far beyond the deference to our state colleagues which federalism counsels. Were the district court's reasoning to stand, defendants in state court would be placed in the following quandary: if they do not raise their federal claims in the state proceedings, they run the real risk of not being able to bring them subsequently in federal court. *Feldman,* 460 U.S. at 482 n. 16, 103 S.Ct. 1303 ("By failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state-court decision in any federal court."). But if they do raise federal claims in their state court defense, and the state court declines to address them, then according to the district court in this case they are also barred from bringing those claims in federal court. No principle of federalism suggests or requires such a result.

Simes v. Huckabee, 354 F.3d at 829.

Providing Petitioner or any other litigant with any lesser opportunity in federal district court to redress those constitutional violations would deny him his due process right to raise his claims in ***any forum*** and encourage state courts to avoid considering federal constitutional claims. Accordingly, this Court should be "loathe to grant less constitutional protection where [a] plaintiff[ ] ha[s] responsibly exercised an opportunity to raise [his] claims and ha[s] been turned away from the state tribunal without so much as an explanation." *Robinson v. Ariyoshi*, 753 F.2d 1468, 1473 n.3 (9th Cir. 1985), *vacated on other grounds*, 477 U.S. 902 (1986).

Lastly, if a state court refuses to address federal constitutional claims and a federal district court subsequently acquires subject-matter jurisdiction over those claims and a litigant proves them, the district court should then be free to fashion any equitable remedy that the state court could have ordered had it ruled upon those claims, including, but not limited to, enjoining enforcement of the state court judgment. *See Wood v. Orange County*, 715 F.2d 1543, 1547 n. 2 (11th Cir. 1983) (holding that Court would "no longer follow [a] mechanical formulation of the *Rooker* doctrine" which would bar "federal claims arising out of a state court decision" where the plaintiff had no reasonable opportunity to raise those claims and "the ***effect*** of a federal decision favorable to the plaintiff would be to modify or overturn the state judgment.") (emphasis by court).

CONCLUSION

Petitioner has twice unsuccessfully petitioned this Court for review. First, Petitioner, not knowing why his 10 year disbarment had been transformed into a permanent denial decision when he reapplied for admission to the Florida Bar, requested this Court to review whether his substantive due process rights were violated because his permanent exclusion from practicing law in Florida was based solely on the same misconduct which formed the basis of the original disbarment judgment, without considering any evidence of rehabilitation.

Second, Petitioner, after discovering post-judgment that the General Counsel of the Florida Board of Bar Examiners had changed the Board hearing panel's two-year admission recommendation to permanent denial and filing a motion to vacate that judgment (which the Florida Supreme Court refused to address on the merits), requested this Court to review whether his procedural and substantive due process rights were violated because the Florida Supreme Court summarily dismissed his motion to vacate its judgment permanently denying him admission to the Florida Bar and refused to conduct an evidentiary hearing.

After turning to the federal courts to seek an adjudication of the merits of the federal constitutional claims the state court refused to address, both the district court and the circuit court invoked the *Rooker-Feldman* doctrine to effectively bar Petitioner from ever having his claims adjudicated in either the state or federal courts.

While Petitioner's current petition represents his last opportunity to get any court to decide whether evidence of the Board General Counsel's misconduct unconstitutionally tainted the judgment which has permanently excluded Petitioner from ever practicing law in Florida, it also exemplifies the broad use of the *Rooker-Feldman* doctrine by the lower federal courts to discourage and bar litigants from pursuing redress of violations of their federal constitutional rights in the state and federal courts. As a result, this case addresses an issue of national importance that affects countless, similarly-situated litigants who seek redress for federal constitutional violations in the federal district courts after a state court's refusal to adjudicate the merits of those claims but are barred for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.

Because the circuits have been split on this issue since *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) was decided and there is a compelling need for nationwide uniformity, these conflicts should now be settled by this Court. Accordingly, the petition for writ of certiorari should be granted.

Respectfully submitted,

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