No. 20-102

In the Supreme Court of the United States

CHRISTOPHER HADSELL,

Petitioner,

—v—

BARRY BASKIN, et al.,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Christopher Hadsell
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I. QUESTIONS PRESENTED

1. Congress has the sole power to govern the federal courts' original and review jurisdiction of state-court judgments. Does *Rooker*'s usurpation of Congress' power to expand this Court's jurisdiction to include exclusive jurisdiction for appellate review of state-court judgments, and to contract the federal inferior courts' jurisdiction to exclude all original and review jurisdiction of state-court judgments, violate the Separation of Powers doctrine and *Kokkonen*?

2. Has the combined effect of the federal inferior courts' various local rules resulted in the courts' ability to eliminate a litigant's right to be heard in violation of the 5th Amend.'s Due Process Clause, 7th Amend.'s Right of Trial by Jury, and *Goldberg*?

II. PARTIES TO THE PROCEEDING

Petitioner is **Christopher Hadsell** ("**Hadsell**"). He was:

Plaintiff in the United States District Court, Northern District of California ("**Trial Court**").

Appellant in the United States Court of Appeals for the Ninth Circuit ("**9th Cir**").

Respondents are:

Individuals (21), and one county political entity, who collectively, self-identified into the following six groups for pleadings purposes:

Collectively, Campbell & Whiting, ("**C&W**"):

"**Campbell**": Kimberly Campbell.

"**Whiting**": William F. Whiting.

They were:

- Defendants in the Trial Court.
- Appellees in the 9th Cir.

Collectively, Department of Child Support Services, ("**DCSS**"):

"**CCC-DCSS**": Contra Costa County Department of Child Support Services—a local county agency, ***funded entirely by federal funds***, and governed by the Contra Costa County Board of Supervisors rather than the

California Legislature or California Officials.

"**Lindelof**": Mary Lindelof.

"**Self**": Melinda Self

"**Tarin**": G. Boyd Tarin

They were:

- Defendants in the Trial Court.
- Appellees in the 9th Cir.

"**Dailey**": Garrett Dailey

He was:

- Defendant in the Trial Court.
- Appellee in the 9th Cir.

"**Isham**": Catherine Isham (fka Porter, Howard, Hadsell)

She was:

- Defendant in the Trial Court.
- Appellee in the 9th Cir.

Collectively, ("**St-Jud**"):

"**Baskin**": Barry Baskin.

"**Bowen**": Christopher Bowen.

"**Cantil-Sakauye**": Tani Cantil-Sakauye.

"**Hinton**": Barbara Hinton.

"**Ichikawa**": Garry Ichikawa.

"**Jones**": Barbara Jones.

"**Mockler**": Terri Mockler.

"**Murphy**": Kathleen Murphy.

"**Needham**": Henry Needham, Jr.

"**Santos**": Anita Santos.

"**Simons**": Mark Simons.

"**Treat**": Charles Treat.

"**Weil**": Edward Weil.

They were:

- Defendants in the Trial Court.
- Appellees in the 9th Cir.

"**Wapnick**": Tracey Wapnick

She was:

- Defendant in the Trial Court.
- Appellee in the 9th Cir.

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V. PETITION FOR WRIT OF CERTIORARI

Hadsell respectfully submits this petition for a writ of certiorari to the 9th Cir.

VI. JUDGMENTS BELOW

The 9th Cir's judgments are reproduced as follows:

The Trial Court's judgments are reproduced as follows:

VII. JURISDICTION

The 9th Cir issued its Mandate on 4/28/20 (Pet. App. 28a).

This Court's jurisdiction is timely invoked under 28 U.S.C. §1254.

VIII. CONSTITUTIONAL AND STATUTORY PROVISIONS

References in the text to pertinent constitutional and statutory provisions that are not concomitantly quoted in the text are reprinted at 30a et seq.

IX. STATEMENT OF THE CASE

A. UNDERLYING EVENTS

The broad issues, as provided in the questions presented, involve fundamental constitutional issues, for a large number of cases, and invoke important issues that are ongoing now and recurring in the future.

Notwithstanding, the factual details and proceedings are required to be stated and are stated mostly in bullet format to make individual facts easier to digest, and to reference.

This case is at the complaint stage.

Although no party disputes the following facts, even if they did, at this stage, all facts alleged by Hadsell must be accepted as true, and all inferences drawn, must be drawn in the light most favorable to Hadsell by this Court ("**SCOTUS**"), *Pride v. Correa* (9th Cir. 2013) 719 F.3d 1130, 1133.

- Hadsell filed an action against Isham in the California Superior Court, County of Contra Costa ("**Cal. Trial Court**"), First Amended Complaint, 55:24-25, (Trial Court Dkt 45, "**FAC**").
- Isham filed a motion ("**Isham MOT**") seeking a final judgment regarding a portion of Hadsell's action whereby one party would receive cash payments from the other ("**Pmts Issue**"), FAC, 56:10-11.
- Judge Treat ("**Treat**") presided at the motion hearing. He held that a motion hearing was inadequate to resolve the Pmts Issue. A trial was set. In the interim, Treat entered an interlocutory judgment ("**Interlocutory JDMT**") mutually acceptable to the parties, providing for payments from Hadsell to Isham that provided for significantly lower payments than requested in the Isham MOT. The Interlocutory JDMT reserved the Pmts Issue, FAC 64:1-5
- Treat presided at the Isham MOT trial, FAC, 64:27-66:28.
    - Hadsell's lawyer began the trial by suggesting that evidence wasn't fully developed for adjudication. Treat was amenable to a continuance. Isham's lawyer insisted on proceeding. Treat stated his, "reluctant[ance] to have an all-day trial on imperfect information"; but Isham's lawyer remained adamant; so, the trial was held.
    - After a full-day's trial, Treat inquired if either party had anymore witnesses. Both parties stated no, and rested their case—with Hadsell's lawyer additionally requesting a Statement of Decision for Treat's imminent

judgment.

  - Treat held, in a judgment on the merits ("**Pmts JDMT**"), that fully adjudicated the issues regarding the Pmts Issue, that no change would be made to the Interlocutory JDMT for either party, thus, no one disputes Hadsell won the Pmts JDMT.

- Treat entered the Pmts JDMT in the Register of Actions thereby making it a judgment pursuant to California law, Cal. Code Civ. Proc. §680.230—thereby replaced the Interlocutory JDMT with the Pmts JDMT as a final adjudication of the issues. Because no party timely appealed the Pmts JDMT, the Cal. Trial Court, and any California Court of Review, lost subject matter jurisdiction ("**SMJ**") of the Pmts Issue, *Archdale v. Am. Int'l Specialty Lines Ins. Co.*, (2007) 154 Cal. App. 4th 449, 479; FAC 61:20-62:25.
- Various trials were held regarding the case's remaining issues ("**Remaining Issues**"). Because Isham had a team of at least five lawyers at trials, including three of the four named partners at the firm, she ran up over $750,000 in legal bills—which she could not pay. As a result, she and her lawyers desperately attempted to collect funds from Hadsell—including assets over which the California courts had no SMJ. Additionally, over the objection of Hadsell's lawyer, Treat allowed Isham to reopen the Pmts Issue where the Cal. Trial Court also had no SMJ, FAC variously, 68-269.
- Treat entered a judgment ("**Final JDMT**") on the Remaining Issues, and again on the Pmts Issue. The Final JDMT had no SMJ for almost all

payments Hadsell was ordered to pay, FAC 68-81. Any judgment issued without SMJ is void on it face without any requirement to obtain a judgment to that effect, *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196.

- By this time, about 18 months into the case, having filed only his initial petition, and every other filing being made in defense of Isham motions (indeed, in 10 years of litigation, he's only filed one motion, other than his original petition, that wasn't in defense, and now of course, filings in this case to seek relief from violations of his federal civil rights by the defendants because California refuses to do so). Because of his defense efforts, Hadsell incurred $150,000 in legal fees, and was forced to act pro se ever since.
- He filed an appeal with the California Court of Appeals, First District ("**Cal. App. Ct.**"). While it provided him some relief (about $5,000), astonishingly, to contort itself to affirm the Final JDMT, it had to ignore not only that it had no SMJ, but further, to find to the contrary: the facts of the all-day trial on the Pmts Issue, (a full day of trial with witnesses, both sides resting, a judgment being made, and entered), and dectermine that it wasn't a completed trial with a judgment entered, but a continuance.
- Given the facts, no party thought such a theory of the case possible, and of course, didn't brief it. Thus, the Cal. App. Ct. not only violated the Party Presentation Principle, *Greenlaw v. U.S.* (2008) 554 U.S. 237, 233-44, by sua sponte raising its own theory, it also violated Cal. Gov. Code §68081 when it failed to grant Hadsell's request to allow the parties to brief the issue, or failing that, to

provide a rehearing.

- The California Supreme Court denied a Petition for Rehearing.
- Because the possibility remained open that California could rectify its error, the federal-civil-rights issues were not ripe to argue to SCOTUS, so it denied certiorari.

B. TRIAL COURT PROCEEDINGS

- Once the possibility for California to rectify its violations of Hadsell's federal civil rights on its own initiative was gone, and state proceedings concluded (so no Younger Abstention, *Younger v. Harris* (1971) 401 U.S. 37 was possible), this case became ripe for litigation.
- As discussed *supra*, the focus of this case is solely on the federal-civil-rights issues. However, the Trial Court focused exclusively on the state-court judgment issues raised by the defendants. As discussed more fully *infra*, the Trial Court failed to apply the complaint-stage standard of review, and failed to apply the *Rooker-Feldman* doctrine properly to a portion of the case, and ignored the portion of the case having nothing at all to do with any state-court judgments (e.g., illegal taking of ERISA funds in violation federal law), The net result is that the *Rooker-Feldman* doctrine doesn't apply to this case, and even if it did, not the entire case, yet the Trial Court dismissed the entire case on having no SMJ due to the *Rooker-Feldman* doctrine.
- The Trial Court failed to address the unconstitutionality of *Rooker*.

- Equally important, the Trial Court used local rules to deny any hearings in this case. So, Hadsell's constitutional right was violated to have a hearing, with a jury trial, and an impartial judge.

C. 9TH CIR PROCEEDINGS

- As SCOTUS mandates for any reviewing court hearing an appeal by right, that reviewing court must provide meaningful review, *Kent v. U.S.* (1966) 383 U.S. 541, 561. That didn't occur in this case.
- As discussed more fully *infra*, in keeping with Professor McAlister's research of the vast majority of circuit courts' failure to provide meaningful review, it is undisputed by the 9th Cir that its unpublished, unsigned, Memorandum was written by (a) law clerk(s). It provided ***no analysis*** of: a single fact, or rule of law. It provided only: (i) conclusory statements that the Trial Court acted "properly", and (ii) quotes and citations to conclusory language from case law, Pet. App. 23a.

X. REASONS FOR GRANTING THE PETITION

A. *ROOKER* IS UNCONSTITUTIONAL AND HAS MUTATED TO BECOME UNWORKABLE

Aside from the rare instances where the U.S. Const. directly provides for SCOTUS' jurisdiction, the metes and bounds of almost all federal-court jurisdiction is a

creature of Congress.

This case presents a fundamental constitutional question about whether SCOTUS can violate the separation-of-powers doctrine, and *Kokkonen v. Guardian Life Ins. Co. of America* (1994) 511 U.S. 375, 377[1], by usurping Congress' power and setting its own appellate jurisdiction as it did in *Rooker v. Fidelity Trust Co.* (1923) 263 U.S. 413, 416.

The *Rooker* Court expanded SCOTUS' jurisdiction by providing itself with exclusive jurisdiction to review state-court judgments, and concomitantly contracted the jurisdiction of all federal inferior courts by taking away any jurisdiction for original/review jurisdiction of ***any*** state-court judgments, *Id.*

Congress knows how to provide exclusive jurisdiction. Title 28 provides for exclusive jurisdiction in only three sections. None of them confer exclusive jurisdiction of appellate review of state-court judgments upon SCOTUS.

Indeed, from the time of the adoption of the U.S. Const., and the passage of the Judiciary Act of 1789, 1 Stat. 73, neither the U.S. Const., nor Congress, have ever conferred exclusive jurisdiction to review all state-court judgments upon SCOTUS.

More importantly, the U.S. Const./Congress have never removed original/review jurisdiction from federal inferior courts because a case involves a state-court decision.

Even if Congress had conferred exclusive jurisdiction, the law that the *Rooker* Court cited as its

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[1] "Federal courts are courts of limited jurisdiction. They possess ***only*** that power authorized by Constitution and statute, [Citations], ***which is not to be expanded by judicial decree***, [Citation]", (emphasis added).

authority (Judicial Code 1911, §237) was repudiated by Congress when Congress enacted Title 28 as positive law in 1948.[2] Thus, if for no other reason, *Rooker* is no longer precedential because it's overruled by Congressional statute.

This issue is vitally important because Congress ***has*** bestowed, nonexclusive, discretionary review of state-court judgments upon SCOTUS, but ***only*** for state-court judgments from a state's highest court, 28 U.S.C. §1257.

Thus, because SCOTUS unconstitutionally eliminated jurisdiction of a state-court judgment case from the federal inferior courts, any litigant who cannot afford the time/expense of litigating a state-court judgment[3] through to the highest state court, is foreclosed from redress of grievance to the federal courts in violation of his/her 1st Amend. rights.

1. PERFECT CASE FOR CHIEF JUSTICE ROBERTS

As Chief Justice Roberts testified at his confirmation hearing:

> [I]t was after I left the [Justice] Department and began arguing cases against the United States, that I fully appreciated the importance of the Supreme Court in our constitutional system. Here was the United States, the most powerful entity in the world, aligned against my client, and yet all I had to do was convince the Court that I was right on the law, and the

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[2] The updated law to Judicial Code 1911, §237 (28 U.S.C. §1257) remains as before: no exclusive review of state-court judgments conferred upon SCOTUS.

[3] In state-court civil litigation, there are no state-provided attorneys.

> Government was wrong, and all that power and might would recede in deference to the rule of law.
>
> That is a remarkable thing. It is what we mean when we say that we are a Government of laws and not of men. It is that rule of law that protects the rights and liberties of all Americans. It is the envy of the world, because without the rule of law, any rights are meaningless.
>
> President Ronald Reagan used to speak of the Soviet Constitution, and he noted that it purported to grant wonderful rights of all sorts to people, but those rights were empty promises because that system did not have an independent judiciary to uphold the rule of law and enforce those rights. We do, because of the wisdom of our Founders and the sacrifices of our heroes over the generations to make their vision a reality.
> *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States Before the S. Comm. on the Judiciary*, 109th Cong., 1st Sess., Sept. 12-15, 2005, 55-56 (highlights added).

This is the perfect case for Chief Justice Roberts to prove that: his public statements are not "empty words" (equivalent to the Soviet Constitution's "empty promises"). To prove that: he spoke those words, under oath, with true conviction, rather than as "empty words" spoken merely to gain access to the levers of SCOTUS' powers. To prove that: he will not refuse to use SCOTUS' "power and might" when they must be directed at

SCOTUS itself because SCOTUS is "the Government [that is] wrong" here. To prove that: when SCOTUS is wrong, it too must yield to the rule of law.[4]

2. PERFECT CASE FOR JUSTICE GORSUCH

Justice Gorsuch has made similar public statements about the government's abuse of the separation-of-powers doctrine. In his dissent in *Gundy v. United States* (2019) 139 S.Ct. 2116, 2142, he stated:

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[4] It is important to note that it is ***not***, "all [that Chief Justice Roberts] had to do was convince the Court that [he] was right on the law and the Government was wrong...", *Id.* (highlight added). Well ***before*** that, he had to gain access to SCOTUS. As the "bible" for SCOTUS' law clerks, and therefore, for the "Cert Pool", provides (STEPHEN M. SHAPIRO, ET AL., SUPREME COURT PRACTICE (11th ed. 2019), 4-5, 4-6): "[SCOTUS] has consistently granted approximately 70% of the certiorari petitions filed by the Solicitor General." This compares, "to the 3 to 4% rate [of grants to] paid petitions [assigned nos. 1-4999] filed by other parties." And of that meager 3-4% granted to other parties, "Since 1985,... veterans of the Solicitor General's Office have entered private practice, forming... 'a Supreme Court Bar of elite attorneys.'... [Exactly as the Solicitor-General-Office-alumnus Chief Justice Roberts did.] More than 50 percent of petitions for certiorari granted to parties other than the Solicitor General during the 2007 term were filed by members of this elite bar." As for IFP petitions (assigned nos. 5,000+), "0.1 percent" are granted, essentially five out of about 5,000 each year. How would Chief Justice Roberts' view of "all I had to do was" be altered if here were part of the 99.9% of the petitioners denied access to SCOTUS?

Justice John Paul Stevens stated, "[T]he use of a cert pool, in which 'a recommendation to deny... is... attractive to a risk-averse clerk,'..." (*Id.*, fn 17, 4-9) means that for any pro-se, paying petitioner (even if s/he is an attorney), the already few remnants left on the bare carcass after the Solicitor General and the "elite attorneys" have engorged themselves, are for all practical purposes, nonexistent—no matter how certworthy the petition.

> [W]hen the separation of powers is at stake, we don't just throw up our hands... [W]e recognize that abdication is "not part of the constitutional design."
> Quoting from Justice Kennedy's concurrence in *Clinton v. City of New York* (1998) 524 U.S. 417, 452.

This is the perfect case for Justice Gorsuch to prove that: SCOTUS Justices don't just throw up their hands and abdicate their duty when it's SCOTUS itself that violates the separation-of-powers doctrine.

3. PERFECT CASE FOR JUSTICE GINSBERG

This is the perfect case for Justice Ginsberg. As she decried in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* (2005) 544 U.S. 280, 283, the federal inferior courts' have mishandled the "***Rooker-Feldman* doctrine"** as provided in her finding that, as:

> Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law...

This mishandling is the result of *Rooker* being misused to clear the federal-inferior-courts' dockets of state-court cases.[5] SCOTUS' response to creating the

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[5] The *Rooker* case was a mortgage-default-collection case that had languished in litigation for nearly 9 years in the Indiana courts before

Rooker monster[6], is the same as its response to creating the *Barron v. City of Baltimore* (1833) 32 U.S. 243 monster[7]: rather than overrule the case, create exceptions to swallow it up.

For *Rooker*, the exception is *District of Columbia Court of Appeals v. Feldman* (1983) 460 U.S. 462.

Justice Ginsberg does an exquisite job of explaining the application of the *Rooker-Feldman* doctrine in *Exxon*. Depending on the facts, this involves either a one-step, or two-step process.

The first step is to apply *Rooker*, *Exxon*, 284. This is simple and straight-forward:

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it reached SCOTUS, on writ of error, from the Indiana Supreme Court, on 6/22/1921. Although William Rooker was a lawyer, he was pro se. The case languished on SCOTUS' docket until 2/19/1923 when it was dismissed. Justice Van Devanter was self-described as crippled with writer's block. He also was recognized for his expertise on land claims. As a slow-moving case involving real estate, and essentially a backwaters case, with all due respect, the case was well-suited for Justice Van Devanter. However, after further activity in the case, Mr. Rooker resorted to the district court, which back then, resulted in appeal by right directly to SCOTUS. As has been discussed *supra*, this time SCOTUS usurped Congress' power to prevent the case's return, and unconstitutionally assigned itself exclusive jurisdiction to review all state-court judgments. Notwithstanding, the case reappeared at SCOTUS with another dismissal issued 3/22/1926, and it continued to rage on in Indiana until at least 1931. *Rooker* would likely never have seen the light of day again in federal courts had it not been tailor-made for district-court abuse so that they could sweep state-court judgment cases from their dockets.

[6] The Frankenstein case that provides legal cover for the federal-inferior-courts' failure to address state-court judgments that violate state-residents' federal rights.

[7] The Frankenstein case that provides legal cover for the States' violations of its citizens' federal rights recognized in the Bill of Rights; thereby fanning the flames of the Nullification Controversy in South Carolina (its attempted succession), that was in turn, an instigating force leading to the Civil War (South Carolina's actual succession).

Step 1:

If all four, fact-based prongs are ***not*** met, the *Rooker-Feldman* doctrine does ***not*** apply, the district court has jurisdiction, and the analysis is complete.

If all four prongs ***are*** met, then apply Step 2.

The second step is to apply *Feldman*. Not quite as simple as Step 1, but still, straight-forward, *Exxon*, 286-87.

Step 2:

The state-court judgment issue is analyzed to determine if the complaint involves a generic claim, (viz., applicable to a number of cases)—ideally, applicable to a wide variety of cases beyond the case at hand; e.g., contracts, family law, property, and torts cases. Justice Ginsberg labels such a claim, an "independent claim".

If the case's state-court judgment issue involves such a generalized claim, then such a case is an exception to *Rooker* and the district court has jurisdiction.

In Mr. Feldman's case, he was challenging the constitutionality of a law. If the law were unconstitutional, that result would apply to any case involving that law, not just Mr. Feldman's case. Therefore, SCOTUS held the district court had jurisdiction. Indeed, Justice Ginsberg could not have more clearly signaled SCOTUS' intentions: the *Rooker-Feldman* doctrine is to be used sparingly, if at all, for a district court to avoid jurisdiction. She stated, "Since *Feldman*, ***this Court*** has ***never*** applied *Rooker–Feldman* to dismiss an action for want of jurisdiction.", *Exxon*, 287 (emphasis added).

On the other hand, if the state-court judgment issue is particularized to the case—to pick an extreme example, a fact-bound issue like, "Was the light red or green?"—then that would cause the district court to delve

into the particular details of the case rather than analyze it at the 30,000 foot level. In such a scenario, *Feldman* wouldn't apply as an exception, and the court would lack jurisdiction as it found in Step 1. In such cases, the particularized issue is said to be "inextricably intertwined" with the state-court judgment such that it would have little, if any, application outside the case at hand.

While there are plenty of cases where *Rooker* is misapplied (such as this case, discussed *infra*), the egregious cases that Justice Ginsberg alludes to are those where the *Rooker* analysis would result in jurisdiction, which should end the analysis at Step 1, but instead, the district court goes on to Step 2, in error, and *Feldman* is applied on an ***independent*** basis to hold that there is no jurisdiction.

Using an "exception" to a rule, as an independent basis to hold that a rule applies when it otherwise wouldn't apply, is absurd.

That's the equivalent of holding that if a defendant successfully proves a self-defense exception to murder, rather than the exception providing that s/he is ***not guilty***, proving the exception proves s/he is ***guilty***. Absurd.

Indeed, this scenario is the exact example that Justice Ginsberg warns against where *Rooker* is negated by *Feldman*, so ***jurisdiction should be found***:

> If a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party ..., then there is jurisdiction..."
> *Exxon*, 293.

To translate to more basic terms: if the district court's

judgment reverses the state-court judgment (translation of: "denies a legal conclusion that a state court has reached"), so long as the plaintiff presents a generic claim (translation of: "If a federal plaintiff 'present[s] some independent claim"), then there is jurisdiction.

The problem here is mostly with the use of the term "independent claim" rather than "generic claim".

Justice Ginsberg uses "independent claim" to mean that the issue could stand on its own; viz., "independent" of the case at hand, because of its applicability to cases ***outside*** the case at hand.

In contrast, the district courts view "independent claim" as meaning that the claim ***cannot*** have any impact on the state-court judgment at hand. As this analysis demonstrates, that is error regarding "generic claims".

Despite Justice Ginsberg's excellent efforts, the *Rooker-Feldman* doctrine remains misunderstood to the point that authority can be found to support whatever meaning the inferior federal courts want. As a result, it is unworkable, resulting in rampant abuse and misuse to dismiss meritorious claims that do have SMJ.

However, it's not as though the elimination of the *Rooker-Feldman* doctrine would open the flood gates to litigation. There are plenty of other limiting issues: (i) the requirement to prove all the elements of the civil-rights violation, and (ii) getting past all the available positive defenses: inter alia, judicial immunity, quasi-immunity, state-official immunity, legislative immunity, police immunity, Noerr-Pennington, and the 11th Amend.

The problem is, these other limiting issues require work and analysis to apply them and to review them. But because the *Rooker-Feldman* doctrine has been so frequently abused and misapplied, it's the equivalent of

magic words to sweep aside jurisdiction ***because reviewing court don't reverse***.

As Professor McAlister's research provides, Merritt E. McAlister, *"Downright Indifference": Examining Unpublished Decisions in the Federal Courts of Appeals* (2020) 118 Mich. L. Rev. 533, 534-36 (highlights and emphasis added, footnotes elided):

> During the first week in October 2016, the U.S. Court of Appeals for the Fourth Circuit issued 104 decisions in pending appeals. Two of those decisions made law [1.9%]; the rest [98.1%], which were "unpublished" dispositions, did not. Three cases [2.9%] received oral argument. Sixty of the 104 dispositions [57.7%] involved pro se appellants... Of the decisions the court issued in pro se appeals that rejected the appeal (or, once, that vacated the judgment), only twenty-one of sixty-nine [30%] revealed any independent decisionmaking by the appellate court. For the rest--or in 70% of the pro se appeals resolved that week--the Fourth Circuit either affirmed "for the reasons stated by the district court" or simply found "no error" (without further elaboration).
>
> If that's shocking, it shouldn't be. The Fourth Circuit is not an outlier.... Over the last fifty years, federal courts have increasingly relied on the so-called "unpublished decision" to combat a caseload volume "crisis." These decisions are not precedential and make no law; they are often short, perfunctory, unsigned opinions drafted for the benefit of the parties, not the public....

> The crisis that created this inferior class of appellate work, however, has abated; today [2020], the caseload volume of the federal courts of appeals appears to be receding. But the inferior work remains—and, worse yet, it has birthed an inferior appellate justice system. In *seven* of the twelve geographic circuits, unpublication rates hover at or over 90%. Judicial staff attorneys—a position lacking the cachet of a federal clerkship—review and resolve appeals destined for nonpublication without significant judicial oversight ***or the benefit of oral argument***. Judges are too busy to do more than (hopefully) ensure the correct result in these cases.
>
> Traditional appellate process—including oral argument and judicial scrutiny—continues for the system's haves. But for its have-nots, the promise of an appeal as of right has become little more than a rubber stamp: "You lose."

The essence of our judiciary is equal justice under the law.

If the federal judiciary is to merit respect, it cannot treat litigants in such blatantly unequal fashion.

4. PERFECT CASE FOR JUSTICES KAGAN AND THOMAS

Justice Kagan formerly clerked for Justice Thurgood Marshall, the great civil rights lawyer—Chief Council for the NAACP and the lawyer for the series of cases culminating in the *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.* (1954) 347 U.S. 483 case—yet another "exception" case (excepting education) from yet

another SCOTUS created "monster" case, *Plessy v. Ferguson* (1896) 163 U.S. 537 that gave legal cover ("separate but equal") for states to, yet again, violate their residents' federal rights (Jim-Crow laws).

Justice Kagan has made public comments about how SCOTUS should champion civil rights. In particular, how *Brown* began the death by a thousand cuts of *Plessy*:

> This Court decided *Brown* v. *Board* because lawyers, led by Thurgood Marshall, I mean really led by Thurgood Marshall, brought cases to the Court which finally made the Court understand that this [prohibiting States from violating its citizens' civil rights and their right to equal protection under the law] was their Constitutional duty....
> MR. CIVIL RIGHTS: THURGOOD MARSHALL AND THE NAACP (Public Broadcasting Service 2014), 51:26–51:43 (highlights added).
>
> I don't know of a legal accomplish in this country that's greater.
> *Id.*, 52:06–52:16.

This case involves the quintessential civil rights federal law (42 U.S.C. §1983, "**§1983**") that protects state residents from violation of their civil rights by their home state—especially when those states are given legal cover to commit their violations based upon *Rooker*. Thus, this is the perfect case for Justice Kagan to prove that: SCOTUS will do its, "Constitutional duty" to protect civil rights by striking down a blatantly unconstitutional case that routinely allows states to violate its citizens' federal civil rights.

Justice Thomas fills Justice Marshall's former seat at SCOTUS. He has also championed civil rights in his role

as Chairman of the EEOC. His efforts are partially inspired from his actual suffering through violations of his civil rights from Jim-Crow laws against him and his family. They were also partially inspired by his standing upon the shoulders of those who helped him in his struggles against such violations. Like Chief Justice Roberts, he made public comments, under oath, about his experiences and motivations during his confirmation hearings:

> But for the efforts of so many others who have gone before me, I would not be here today.... Only by standing on their shoulders could I be here....
>
> I remember,... after I completed law school I had no money, no place to live. Mrs. Margaret Bush Wilson, who would later become chairperson of the NAACP, allowed me to live at her house. She provided me not only with room and board, but advice, counsel and guidance.
>
> As I left her house that summer, I asked her, "How much do I owe you?" Her response was, "Just along the way help someone who is in your position." I have tried to live by my promise to her to do just that, to help others....
>
> Justice Marshall, whose seat I have been nominated to fill, is one of those who had the courage and the intellect. He is one of the great architects of the legal battles to open doors that seemed so hopelessly and permanently sealed and to knock down barriers that seemed so

> insurmountable to those of us in the Pin Point, GA's of the world....
>
> [M]y grandparents grew up and lived their lives in an era of blatant segregation and overt discrimination. Their sense of fairness was molded in a crucible of unfairness.... But through it all they remained fair, decent, good people....
>
> They were hardworking, productive people who always gave back to others.... I follow in their footsteps and I have always tried to give back....
>
> If confirmed by the Senate, I pledge that I will preserve and protect our Constitution and carry with me the values of my heritage: fairness, integrity, openmindedness, honesty, and hard work.
>
> *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States Before the S. Comm. on the Judiciary*, 102d Cong., 1st Sess., Sept. 10-13 and 16, 1991, Part 1, 109-110 (highlights added).

This is the perfect case for Justice Thomas to prove that: his words, under oath, were not "empty words" and that he will honor his pledge, and his oath of office, "to preserve and protect our Constitution" and to "pay it forward" when it is SCOTUS itself that must be stopped from violating the Constitution and from allowing states to violate its citizens' civil rights under SCOTUS' aegis.

5. PERFECT CASE FOR ALL THE JUSTICES

When entering the Court, all the justices enter a building with the words, literally carved in stone on the entrance, "Equal Justice Under Law".

Rooker, 416 provides that only SCOTUS has appellate jurisdiction over state-court judgments, and even then, only from a state's highest court. Additionally, district courts have no appellate jurisdiction at all.

Yet, when the litigant is President Trump, (invoking jurisdiction of the United States District Court, Southern District of New York ("**S.D.N.Y.**"), pursuant to 28 U.S.C. §§1331, 1343, 2201, and §1983[8], *Trump v. Vance* (2019) S.D.N.Y. 1:19-cv-08694, Doc 27, ¶8 regarding an order—viz., a grand-jury subpoena—issued by a NY criminal trial court[9]) not a single litigant/litigant's lawyer[10], raised the issue of the *Rooker-Feldman* doctrine prohibiting SMJ. Nor did the S.D.N.Y., United States Court of Appeals for the Second Circuit, nor SCOTUS[11], all of whom are required to raise SMJ jurisdiction sua sponte because no litigant can waive or forfeit SMJ, *Arbaugh v. Y&H Corp.* (2006) 546 U.S. 500, 501. Instead, SCOTUS and the litigants were happy to avoid SMJ despite that it was lacking pursuant to *Rooker*.

If SCOTUS is to provide "Equal Justice Under Law",

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[8] An exact subset, but only a subset of Hadsell's jurisdictional basis in this case.

[9] Which is not the New York Court of Appeals, the highest state court in New York.

[10] Including sophisticated federal attorneys from MA, NY, and VA.

[11] Nor amici of this Court, including sophisticated DOJ lawyers and law professors.

it cannot treat SMJ differently for different litigants.

6. HOW THE JUSTICES' ISSUES FIT THIS CASE

a. *Rooker*: Separation-of-Powers Unconstitutionality

The Trial Court acknowledges that *Rooker* is unconstitutional, but violates its oath of office when it holds, "[T]o the extent that Plaintiff argues that *Rooker-Feldman* is unconstitutional, the doctrine remains the law of the land, and the undersigned is obligated to follow it.", Pet. App. 17a.

In keeping with Professor McAlister's research *supra*, the 9th Cir[12], didn't address *Rooker*'s unconstitutionality (viz., its violation of separation of powers).

b. *Rooker-Feldman* doctrine Misapplied

Because this case is at the complaint stage, all Hadsell's alleged facts must be accepted as true, and all inferences drawn, must be drawn in the light most favorable to Hadsell, *Pride*, 1133.

Despite the Trial Court's stating that it was possible to draw inferences favorable to Hadsell that would result in the *Rooker-Feldman* doctrine being inapplicable[13], the Trial Court used its own, less favorably drawn inference

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[12] In an unpublished, unsigned, Memorandum [that the 9th Cir does not dispute was written by (a) law clerk(s)].

[13] Hadsell's complaint seeks enforcement of the final, Pmts JDMT—it is undisputed he won that judgment. That fact means factual prong one of *Exxon* fails and *Rooker* is inapplicable.

to Hadsell[14, 15], to hold that the *Rooker-Feldman* doctrine applied; thereby dismissing the case.

Even if *Rooker* could apply, the *Feldman* exception to *Rooker* would apply here because Hadsell's claim is based upon the "generic claim" of the court's lack of SMJ that would apply to ***any*** case—contracts, family law, property, torts, etc.

Instead, the Trial Court finds (Pet. App. 14a):

> Since Plaintiff alleges, as his legal injury, erroneous decisions by the state court, and seeks relief from those judgments, the federal action raises a de facto appeal.[16]

Then, having already explained there are at least two ways to view the case (with the standard of review

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[14] *White v. White*, (1900) 130 Cal. 597, 599 instructs, "Upon [the judgment's] entry the jurisdiction of the court over the subject matter of the suit and the parties was exhausted...". And because there is no SMJ, "After final judgment any further judgment, or order materially varying the judgment, is a mere nullity." Notwithstanding no SMJ to change the Pmts JDMT, Isham obtained a subsequent judgment that it is undisputed, materially altered the Pmts JDMT; therefore, it is a nullity. Hadsell lost that subsequent judgment, and further judgments to stop enforcement of the null and void judgments based upon his federal-substantive-due-process right to equal protection under law to enjoy the exact same right as all other Californians—to be free from enforcement of provisions from a null and void judgment. Indeed, not one case could be found in California law where a null and void judgment was enforced.

[15] The Trial Court's statement is, "Despite Plaintiff's arguments to the contrary [the favorable inference], the judgments entered after December [7], 2011 were unfavorable to him, thereby making him a "loser" [the court's inference that is not most favorable to Hadsell] for the purposes of *Rooker-Feldman*.

[16] "De facto appeal" are mutated, magical words, to stand in for *Feldman*'s "inextricably intertwined" analysis. Unfortunately, because of de facto's other connotations, the words serve only to lead courts astray when applying *Feldman*—as it did here.

requiring the court to adopt the view most favorable to Hadsell), the court violates the standard of review, and contradicts itself by stating (Pet. App. 15a):

> There is no way to view this case other than as a de facto appeal, because his seeking to void later judgments is tantamount to seeking relief from same.

Both these statements demonstrate a failure to understand and apply the *Feldman* exception to *Rooker*.

Here, Hadsell's claim that the court lacked SMJ is so "generic", or "independent", that it would apply to ***any*** case because it is independent of ***any*** other facts or law involved in the case. Therefore, *Feldman* applies as an exception to *Rooker* here.

In concert with Professor McAlister's research *supra*, the 9th Cir[12, page 23], provided ***no analysis*** of a single fact, or rule of law. It provided only: (i) conclusory statements that the Trial Court acted "properly", and (ii) quotes and citations to conclusory language from case law, Pet. App. 23a.

c. Chilling of Civil Rights

Section 1983 is the quintessential federal-civil-rights statute that undergirds complaints against states that violate its citizens' federal civil rights.

It applies to all three state branches of government, and any person who operates under color of law, *Id.*.

However, as it applies to a state judiciary, §1983's effects are severely chilled.

As discussed *supra*, SCOTUS case law prevents access to the federal inferior courts for state-court judgments that violate one's federal civil rights. And Congress' making SCOTUS' jurisdiction entirely

discretionary has made that discretion unconstitutional, as-applied[17], because, as discussed *supra*, unless one is the Solicitor General, or among the handful of Solicitor-General-Office alumni comprising the "elite bar", then SCOTUS' dance card is vastly overfull from thousands of petitions vying for a mere handful of slots—especially if one is pro per because regardless of the certworthiness of the petition, the cert pool's risk aversion exacerbates the impossibility of being granted cert.

d. Equal Justice Under Law

Although likely apocryphal, when President Jackson purportedly said, "John Marshall has made his decision, now let him enforce it.", that statement about SCOTUS' opinion regarding Georgia's gold deposits, laid bare SCOTUS' Achilles heel. Both Georgia and President Jackson ignored SCOTUS' opinion—neither Georgia nor President Jackson suffered any deleterious effect.

Justice Breyer gave public voice[18] to the fear that SCOTUS would be irrelevant if the People followed Georgia's and President's Jackson's example of simply ignoring SCOTUS' opinions.

Justice Breyer argued that one should forbear the hopefully few SCOTUS opinions that are disagreeable.

However, he fails to voice that his proposition involves a two-way street. Namely, such disagreeable

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[17] As discussed *supra*, federal jurisdiction is a creature of Congress. Notwithstanding, Congress' discretion is proscribed by the Constitution. If Congress limits access to the courts on an as-applied basis such that it eliminates the People's 1st Amend. right to petition the government for redress of grievances, then its action is unconstitutional.

[18] Stephen Breyer, *Future: Will the People Follow the Court?*, Two-part Lecture Delivered at Yale School, February 15-16, 2010.

opinions should be rare, avoid cynicism, adhere to the maxim "Equal Justice for All", and not unconstitutionally violate the Peoples' fundamental rights.

Every reasonable person understands that the vast majority of SCOTUS' cases involve close calls, with excellent arguments on both sides. Often, a Solomonic choice is left up to SCOTUS. In such cases, a strong reverence for stare decisis must be applied to the resulting decisions.

However, unwavering reverence to stare decisis is not appropriate for all cases. Nor will the dam burst if cases like *Barron*, *Dred Scott*, *Slaughter-House Cases*[19], *Plessy*, and yes, *Rooker* are reversed quickly, and decisively, rather than through death by a thousand exceptions taking decades, if not well over a century, to accomplish.

As *Timbs v. Indiana* (2019) 139 S.Ct. 682 made clear just last February, 2019, the Bill of Rights have yet to be fully incorporated against the states.

The first lesson in earning respect is that one has to show respect to others before one can earn the respect of others. If SCOTUS wants to remain respected by the People, SCOTUS must respect the People. SCOTUS shows disrespect to the People when it allows cases like *Rooker* to remain precedent.

7. JUSTICES' ISSUES INVOLVE FUNDAMENTAL CONSTITUTIONAL ISSUES THAT ARE IMPORTANT AND RECURRING

The Justices' issues discussed *supra* involve fundamental constitutional issues—Separation of

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[19] Just a scant 7 years after the Civil War, and passage of the 14th Amend., SCOTUS held the 14th Amend. didn't apply to the states.

Powers, 1st Amend. Right to Redress of Grievances, 5th Amend. Due process, 7th Amend. Right to Jury Trial, and 14th Amend. Constitutional Due Process Applies to the States.

These are extremely important issues because they affect millions of citizens' fundamental rights throughout our country, every day.

Thus, they speak to the core of the mutual respect between the People and our government. A government of, by, and for, the People. Not tyranny of a deity, monarch, or elite class over their subjects.

In these times of nationwide rioting, calls for abolition of the police, and the like, this mutual respective is no theoretical matter. It's up to SCOTUS to fulfill its sworn duty to protect and defend the Constitution, and thereby, to serve the People.

There are only two practical constitutional limits upon SCOTUS' enormous powers: the confirmation process that each Justice endures, and an act of Congress[20].

Because Congressional acts to overrule SCOTUS are rare, we must rely upon confirmation resulting in only people of the highest integrity and character emerging to sit on the bench.

Prove that reliance justified by overruling *Rooker*—a blatantly unconstitutional case that SCOTUS admits is routinely mishandled by the inferior federal courts, and for nearly 100 years, has defied SCOTUS' tinkering efforts.

Indeed, the legal community gloried in pronouncing the death of the *Rooker-Feldman* doctrine after *Exxon*.

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[20] Legislation to overrule a case, or removal by impeachment (removal has never occurred).

However, exactly like the premature obituary for Mark Twain, "The reports of [its] death are greatly exaggerated." Therefore, its unconstitutional reign needs to be ended by its creator: SCOTUS.

B. THE COMBINED EFFECT OF THE FEDERAL INFERIOR COURTS' LOCAL RULES RESULTS IN THE COURTS' ABILITY TO ELIMINATE THE CONSTITUTIONAL RIGHT TO BE HEARD

Goldberg v. Kelly (1970) 397 U.S. 254 stands for the proposition that, "'The fundamental requisite of due process of law is the opportunity to be heard.' [Citation.] The ***hearing must be*** 'at a meaningful time and ***in a mea[n]ingful manner***.'", *Id.*, 267 (emphasis added).

Hadsell understands that local court rules permit, upon the parties' consent or the court's discretion, motions to be decided without hearings.

With the parties' consent, a lack of due process from the absence of a hearing isn't troubling.

For simple matters, it's a closer call whether court efficiency (viz., the government's interest) outweighs a litigant's loss resulting from a lack of due process, *Mathews v. Eldridge* (1976) 424 U.S. 319, 335.

However, as *Goldberg*, 278 provides, there is no doubt there is a lack of due process where, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."

As discussed *supra*, because this case is at the complaint stage, the Trial Court violated the standard of review by failing to use the inference that several of Hadsell's claims are based upon enforcing a state-court

judgment he won. Instead, the Trial Court used its own, less-favorable inference that Hadsell's claims impermissibly attack state-court judgments that he lost—an issue that could have easily been raised and processed, had a meaningful hearing been provided.

Additionally, even if the court were permitted to use its less-favorable inference, that inference doesn't apply to all of Hadsell's claims. E.g., it is undisputed that regardless of the validity of any state-court judgment, or who won/lost any state-court judgment, over $254,000 of Hadsell's ERISA funds were taken from him in violation of 29 U.S.C. §1056(d)(1) (aka, ERISA Anti-Alienation Provision); thus, that cause of action is solely a federal-law issue. Yet that claim, and several others that have nothing to do with the *Rooker-Feldman* doctrine, were impermissibly dismissed based upon a legal doctrine that doesn't apply to them.

Here, counting Hadsell's complaint, there were 21 motions filed with the Trial Court seeking a hearing. Pursuant to Local Rules, the Trial Court, sua sponte, invoked its discretion to avoid holding any hearings.

Likewise, counting Hadsell's opening brief, there were 12 filings with the 9th Cir seeking a hearing. Pursuant to Local Rules, and in keeping with Professor McAlister's research *supra*, the 9th Cir, sua sponte, invoked its discretion to avoid holding any hearings.

Here, summary judgment is the effective outcome, yet, no hearing was held.

Notwithstanding, Hadsell had fundamental rights stripped from him, millions of dollars of assets illegally taken (essentially his entire life's work, including ERISA funds), all in violation of his federal civil rights.

Therefore, there is no legitimate doubt that Hadsell's right to be heard (pursuant to the 5th Amend.'s Due

Process Clause, 7th Amend.'s Right of Trial by Jury, and *Goldberg*) was violated by the absence of any hearings, and a trial before a jury, with an impartial judge.

These issues involve fundamental constitutional rights, regarding actions that must be in accordance with the rule of law and that must occur every day across the nation to ensure that fair and impartial hearings/trials are available for everyone. Absent the right to peaceably adjudicate differences in a fair and just manner, the only option left is lawless self-help.

XI. CONCLUSION

Reasoning from conventional wisdom is appropriate for conventional issues.

Reasoning from first principles is appropriate for important issues.

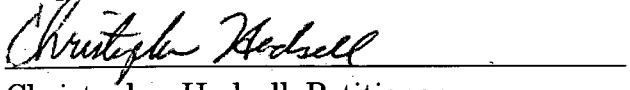
Properly determining federal-court jurisdiction for federal-civil-rights violations where a state judiciary is the transgressor is an important federal issue because the federal government is the only means to legally check a state transgressor that refuses to correct itself.

Therefore, reasoning from first principles is not only appropriate here, it is required.

The same reasoning from first principles applies when one is required to step back and assess whether the various federal-inferior-courts' local rules, which may be determined to be appropriate when analyzed in isolation, but when they are combined, they can, and do, result in violating litigants' federal civil rights to a meaningful hearing, trial by a jury, and with an impartial judge.

For the foregoing reasons, the petition should be granted.

Respectfully submitted,



Christopher Hadsell, Petitioner

July 27, 2020