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 REHEARING

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III. INTRODUCTION

Honor Your Oath.

Do Your Duty.

Until this Court's 10/13/20 Order denied Petitioner's ("**Hadsell**") 7/27/20 Writ of Certiorari ("**Writ of Cert.**"), the opportunity remained to avoid constitutional violations.

But as provided *infra*, the 10/13/20 Order, without reversal by granting this Petition for Rehearing, will result in violating Hadsell's U.S. Const. amend. I ("**1st Amend.**") right to redress of grievances through the courts.

IV. PETITION FOR REHEARING

Pursuant to U.S. Sup. Ct. R., rule[1] 44, Petitioner, ("**Hadsell**"), respectfully petitions for rehearing of this Court's 10/13/20 Order denying Hadsell's Writ of Cert.

A. GROUNDS FOR REHEARING

1. THE FACTS ARE UNDISPUTED

The pertinent facts are:

- The Respondents, federal inferior courts, and California courts (viz., all who can file opposing viewpoints to Hadsell, "**Full Opposition**") include 57—104 individuals (23 are Respondents), inter alia:
    - 29—47 9th Cir. Judges (the range depends on what the "full court" means in the 9th Cir.'s Memorandum, Writ of Cert., 26a);
    - a Federal Magistrate Judge;
    - the California Supreme Court's Chief Justice (Respondent);
    - three State Appellate Justices

[1] Subsequent references to the U.S. Sup. Ct. R. will be designated "**SCOTUS Rule**".

(Respondents);

- 10 State Judges (Respondents);
- seven Lawyers (Respondents); and
- four lead counsels for Respondents.

- The Full Opposition filed 1,895 pages (48%) of the filings in this case.
- Not one word in the Full Opposition's filings disputes that, inter alia:
  - *Rooker v. Fidelity Trust Co. (1923) 263 U.S. 413* violates the U.S. Const.[2] because only Congress can determine the federal courts' jurisdiction, (U.S. Const. art. III, §2, *Ex parte McCardle* (1868) 74 U.S. 506, 512-13)—not this Court ("**SCOTUS**"), *Kokkonen v. Guardian Life Ins. Co. of America* (1994) 511 U.S. 375, 377;
  - The 9th Cir. failed to provide meaningful review because its, unpublished, 1/27/20 Memorandum (Writ of Cert., 22a) was written by a, "[j]udicial staff attorney[]...without significant judicial oversight or the benefit of oral argument."
  - The federal inferior courts, and the State courts, violated Hadsell's U.S. Constitutional rights;
  - The federal district court, using the wrong standard of review, and conjuring its own falsities as "facts", dismissed ***all*** claims in

[2] Indeed, the Federal Magistrate Judge agrees that *Rooker* is unconstitutional (Writ of Cert., 17a), but states, "the [*Rooker-Feldman*] doctrine remains the law of the land," and in error continues by claiming, "and the undersigned is obligated to follow it.", Id.

this case pursuant to the *Rooker-Feldman* doctrine, when even if the doctrine did apply (it doesn't), it would apply to only a portion of the claims;

- The State Appellate courts failed to provide meaningful review; and
- The State trial court acted extrajudicially on a large number of occasions by acting without personal jurisdiction and subject matter jurisdiction—thereby violating Hadsell's U.S. Constitutional rights on each such occasion.

2. THE JUSTICES' OATHS REQUIRE SCOTUS TO GRANT CERTIORARI

SCOTUS' review jurisdiction is entirely a creature of Congress, U.S. Const. art. III, §2, cl. 2.

This Court violated the Separation of Powers doctrine when *Rooker* usurped Congress' power to expand SCOTUS' review jurisdiction to include ***exclusive*** jurisdiction over state-court judgments, and concomitantly eliminated the federal inferior courts' jurisdiction over state-court judgments, *Kokkonen v. Guardian Life Ins. Co. of America* (1994) 511 U.S. 375, 377.

Additionally, the U.S. Const. circumscribes even Congress' powers to create "Exceptions" and "Regulations" to SCOTUS' review jurisdiction—let alone SCOTUS' unconstitutional usurpation of Congress' powers.

Once Congress made SCOTUS' review jurisdiction almost entirely discretionary, (Supreme Court Case Selections Act of 1988, 102 Stat. 662, "**1988 Act**"), it would be a bridge too far to make ***any*** SCOTUS state-court-judgments review jurisdiction exclusive because that would permit SCOTUS to use its "discretion" to violate a citizen's 1st Amend. right to

redress of grievances to the federal government for state-court judgments. That is why Congress has provided exclusive jurisdiction on only three occasions[3]—none of which involve SCOTUS' review jurisdiction.

A SCOTUS justice must take two oaths before s/he may execute his/her duties: i) the U.S.-Const.-art.-VI,-cl.-3 Oath that requires him/her, "[T]o support this Constitution...", and ii) the Judicial Oath that requires him/her to, "[A]dminister justice without respect to persons, and do equal right to the poor and to the rich, and... faithfully and impartially discharge and perform all the duties incumbent upon me... under the Constitution and laws of the United States."

Both oaths require every SCOTUS Justice to use his/her powers to prohibit ***any*** violation of the U.S. Const..

Therefore, because *Rooker* violates the U.S. Const. every Justice ***must*** honor his/her oath, and do his/her duty, to grant certiorari in this case to halt *Rooker*'s U.S. Const. violations.

3. SCOTUS DENIED THE WRIT OF CERT. SOLELY BECAUSE HADSELL IS PRO PER

a. STATE-COURT JUDGMENTS CERTIORARI

The Judiciary Act of 1789, 1 Stat. 73, 81 provided for mandatory state-court judgment appeals to SCOTUS.

For 200 years, state-court judgment appeals were mandatory for SCOTUS.

The Supreme Court Case Selections Act of 1988, 102 Stat. 662, created the discretionary writ of certiorari for state-court appeals.

Therefore, the path to obtain SCOTUS review lies almost exclusively via a writ of certiorari (or "**certiorari**").

Prior to 1973, each justice's clerks reviewed all certioraris

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[3] 28 U.S.C. §§1251, 1292, and 1334..

filed. Since 1973, the justices have the option to pool their clerks for certiorari reviews such that each week, on a round-robin basis, only one justice's clerks do all the certiorari reviews for the Cert Pool.

Thus, the certiorari path involves being deemed "certworthy" in a "Pool Memo" created by the "Cert Pool"[4].

b. PATH TO "CERTWORTHINESS"

i. Formal Certworthiness

"Certworthiness" is not defined anywhere. The only formal statement about certworthiness is in SCOTUS Rule 10 that states a certiorari, "will be granted only for compelling reasons....". A compelling reason includes when a, "[C]ourt of appeals has decided an important question of federal law that has not been, but should be, settled by this Court...", Id.

Here, the question of *Rooker*'s constitutionality was not addressed at all by the 9th Cir. in an unpublished, unsigned, memorandum, written by a staff attorney, without significant judicial oversight, Writ of Cert., 22a. Thus, without meaningful review, *Rooker*'s constitutionality was upheld by negative implication.

In the 12-months ended 9/30/19, 37,384 civil rights cases (13% of all civil cases) were filed in federal district courts, U.S. Courts, http://www.uscourts.gov/statistics-reports/judicial-business-2019-tables (last visited November 6, 2020). All of those cases that involve state-court judgments will involve *Rooker*. Therefore, *Rooker* is "an important question of federal law", that, "should be[] settled by this Court...", since the 9th Cir. refuses to address the issue.

Therefore, this case meets the criterion for formal

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[4] Presently, Justices Alito and Gorsuch opted out of the Cert Pool. However, since granting certiorari minimally requires four justices, the certiorari path must run through the Cert Pool.

certworthiness.

ii. Informal Certworthiness

The legal analysis ideal is: i) the application of unassailable logic from the law, ii) to indisputable facts, iii) resulting in rock-solid decisions that would come out the same way every time no matter who performs the analysis.

This ideal can never be achieved because the logic of the law doesn't derive from mathematical precision—instead, it derives from flawed human logic. And even if the human logic weren't flawed, the tool of lawmakers is the English language—the beauty and bane of which is its innate imprecision.

Thus, while the ideal can't be achieved, as the historical development of informal certworthiness will show, informal certworthiness is nothing more than illogic, built upon quicksand, with the fox guarding the henhouse.

a) INFORMAL CERTWORTHINESS HISTORICAL DEVELOPMENT

i) Illogic

The treatise for SCOTUS law clerks, and practicing attorneys, is the nearly 1,700-page, *Supreme Court Practice*, Supreme Court Practice, Stephen M. Shapiro, et al., Supreme Court Practice (11th ed. 2019) ("***Supreme Court Practice***").

On p. 1-43, it's best description of certworthiness is Justice Harlan's ("**Harlan**") quote from a speech he gave to the New York Bar Association on 10/28/58[5], "'[T]he question whether a case is "certworthy" is more a matter of "feel" than of precisely ascertainable rules.'" Since "feel" is not "precisely

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[5] *Manning the Dikes*, JOHN M. HARLAN, MANNING THE DIKES 16 (1958) ("***Manning the Dikes***").

ascertainable rules", this description is far from the legal analysis ideal.

ii) Built on Quicksand

Since "feel" is useless as a guide, one would hope the "feel" is at least built upon some solid foundation. Such hope is unfounded.

Harlan made passing reference to SCOTUS Rule 10 (rule 19 back then). However, the main underpinning of his argument was Chief Justice Hughes' ("**Hughes**") 3/21/37 letter to Senator Wheeler ("**Wheeler**").

It was written amidst the 1937 Court-Packing Crisis.

The Court-Packing Crisis was purportedly legislation to add justices to SCOTUS to handle the Court's mounting case backlog, William E. Leuchtenburg, Jr., *The Nine Justices Respond to the 1937 Crisis*, 1 J. Supreme Ct History 55, 56-57 (1997). In reality, it was about adding justices to stop SCOTUS from continuing to strike down New-Deal legislation as unconstitutional, Richard D. Friedman, *Chief Justice Hughes' Letter on Court-Packing*, 1 J. Supreme Ct History 76, 79 (1997).

Wheeler was holding hearings ***against*** the legislation on Monday, 3/22/37. Wheeler wanted Hughes to testify, but Hughes' colleagues were against it. However, they were amenable to a letter from Hughes for the hearings, *Id.*

At Hughes' home on Saturday evening, Hughes agreed to write the letter and told Wheeler, "It is now five-thirty. The library is closed, my secretary is gone...", *Id.* Wheeler left and Hughes hastily wrote the letter, without any support from staff, and on Sunday telephoned Wheeler to pick up the letter.

Upon entering Hughes' home, Hughes said, "The baby is born.", *Id.*

After Wheeler read the letter, the two said, "'Does that answer your question?'... 'Yes, it does,' responded Wheeler happily. 'It certainly does.'", *Id.*

Just like the legislation was for political purposes, not court needs, Hughes' letter was for propaganda purposes, not a lack of court needs.

His letter did show the backlog under control from publicly available case backlog tables. However, its statistics to support those tables were conjured from Hughes' "feel" for the backlog. Specifically:

> I ***think*** that it is safe to say that about 60 percent of the applications for certiorari are wholly without merit and ought never to have been made. There are probably about 20 percent or so in addition which have a fair degree of plausibility, but which fail to survive a critical examination. The remainder, falling short, I believe, of 20 percent, show substantial grounds and are granted.
> 81 Congressional Record 1st Session Part 3, 2814-2815 (emphasis added).

No support is provided for any of these percentages. What's worse, as discussed *supra*, they were hastily derived from thin air for propaganda purposes—yet, they have become gospel because this exact passage is quoted by Harlan (*Manning the Dikes*, 14), without any context of their derivation, thereby implying they were carefully prepared with the full weight/imprimatur of a sitting SCOTUS Chief Justice communicating grave concerns to Congress.

The same passage is likewise quoted with the same veneration, with no derivation context, in *Supreme Court Practice*, 1-44.

Such garbage analysis wouldn't be acceptable argument in a(n) cert., brief, or oral argument. Likewise, it shouldn't be used as justification for denying any certiorari as "uncertworthy".

iii) Fox Guarding the Henhouse

Two additional rationalizations exist for denying certioraris without true regard to their certworthiness:

(1) Civil v. Government Litigants

As Harlan states, "A federal litigant whose case has been through the district court and then the Court of Appeals is deemed to have had his, 'day in court,'..."

Good grief! Anyone who holds that paradigm has lost sight of the forest for the trees regarding our government's purpose.

The sole purpose of our government (a government of, by, and for the people), is to serve the people.

If scarce resources are to be allocated between civilians and government, it should be the rare instance in which government wins that allocation.

Additionally, the internal logic is completely flawed. If any litigant has received his/her "day in court", it is the government. It enjoys complete homecourt advantage by owning the building, staffing/managing the employees, and most of all, making up the rules. If the government can't win with two full bites at the apple in those circumstances, it is the government that fails to deserve a third bite.

(2) Solicitor General Certioraris

The *Supreme Court Practice*, 4-5 states that the success rate for the Solicitor General, "is far greater than the rate for other petitioners.... approximately 70 percent... [vs.] 3 to 4 percent... [for] paid petitions... [and] 0.1 percent... [for] unpaid cases."

The stated reason for that success is, "government cases are likely... of more general public importance and to... strictness... the office screens the cases..."

As discussed *supra*, "importance" is in the eye of the beholder. It also seems incredible that the Solicitor General's certioraris would be 18 to 23 times higher in quality than paid certioraris—especially when many paid certioraris are former Solicitors Generals, or their former employees.

However, arguendo, granting both assertions, as discussed *supra*:

The Writ of Cert. addresses issues of great general public importance (e.g., i) SCOTUS' violation of Separation of Powers, ii) SCOTUS' and Congress' violations of litigants' 1st Amend. right to redress of grievances in up to 12% of all civil rights cases nationwide, and iii) SCOTUS' Justices and Law Clerks violating their oaths of office); and

While the Solicitor General's certioraris may undergo scrutiny whereby the government scrutinizes itself (viz., the fox guarding the henhouse), the Writ of Cert. underwent scrutiny by 57—104 separate individuals (including all the 9th Cir. judges and the California Supreme Court's Chief Justice) all of who are either independent or in opposition to Hadsell, all had the opportunity to take a swing at the Writ of Cert., and none laid a single glove on it.

Thus, a Solicitor General certiorari has no broader general-public-issue appeal, or greater scrutiny than the Writ of Cert.

iii. Law Clerks' Risk Aversion

Justice Stevens acknowledges, "[T]he use of a cert pool, in which 'a recommendation to deny... is... attractive to a risk-averse clerk,' may be responsible for the decline in certiorari grants...", *Supreme Court Practice*, 4-9, fn 17. Since 70% of granted certioraris go to the Solicitor General, it is especially risky for a Law Clerk to recommend a pro-se certiorari when

there are Solicitor General certioraris that are being denied.

c. CONCLUSION

Given the demonstrated certworthiness of the Writ of Cert., in concert with the Cert-Pool Law Clerks' risk aversion to issue a favorable Pool Memo to a pro-se certiorari, the only legitimate conclusion that can be drawn is that Hadsell's Writ of Cert. was denied solely because he is pro se.

B. CONCLUSION/PRAYER FOR RELIEF

1. THIS CASE IS ATYPICAL

This case is atypical because it ***doesn't*** require Solomonic wisdom from SCOTUS due to issues involving close calls, and good arguments on both sides.

Here, there are no close calls, nor good arguments on both sides, because there is no dispute between Hadsell on the one side, and the Respondents, federal inferior courts, and California courts on the other side, that, inter alia:

a. *Rooker* violates the U.S. Const.;

b. The 9th Cir. failed to provide meaningful review;

c. The federal inferior courts, and the State courts, violated Hadsell's U.S. Constitutional rights;

d. The federal district court, using the wrong standard of review, and conjuring its own falsities as "facts", dismissed ***all*** claims in this case pursuant to the *Rooker-Feldman* doctrine, when even if it did apply (it doesn't) it would apply to only a portion of the claims;

e. The State Appellate courts failed to provide

meaningful review; and

f. The State trial court acted extrajudicially on a large number of occasions when it acted without personal jurisdiction and subject matter jurisdiction—thereby violating Hadsell's U.S. Constitutional rights on each such occasion.

2. SCOTUS DENIED THE WRIT OF CERT. SOLELY BECAUSE HADSELL IS PRO SE

Because as described *supra*, the facts and the law so strongly favor Hadsell, and this case involves very strong certworthy issues, the only legitimate inference that can be drawn from the 10/13/20 Order is that SCOTUS denied the Writ of Cert. solely because Hadsell is pro per.

a. Therefore, any courageous court clerk who supported the Writ of Cert., and any Justice who voted to grant certiorari, are to be commended.

b. And shame on all the other pusillanimous clerks and Justices because they failed their oaths of office, failed our Nation, and lack integrity.

3. CONCLUSION/PRAYER FOR RELIEF

By standing up to the perfidy of the Full Opposition, and establishing an unopposed public record for all to see of the Full Opposition's: i) cowardice to address the facts, ii) inability to answer Hadsell's arguments, and iii) utter lack of integrity, Hadsell has won all the legal and ethical issues.

What remains is for SCOTUS to have the integrity to honor its oath to the U.S. Const. by reversing *Rooker* and establish the precedent to put a halt to the legal wrongs that millions suffer because they aren't among the legal elite allowed access to SCOTUS.

Therefore, for the foregoing reasons, inter alia, Hadsell prays that this Court:

a. Grant rehearing of the 10/13/20 Order denying the Writ of Cert.;

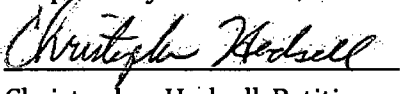
b. Grant the Writ of Cert.; and

c. Appoint Mr. Paul Clement as amicus curiae to brief and argue the case.

i. The modern golden ticket for a Supreme Court Justice is the trifecta of: i) SCOTUS clerkship (Roberts, Breyer, Kagan, Gorsuch, Kavanaugh, Barrett); ii) worked as/for the Solicitor General, or White House Counsel (Roberts, Alito, Kagan, Kavanaugh, Marshall); and iii) argued major civil rights case(s) before SCOTUS (Marshall, Ginsburg).

ii. A major civil rights case win for Mr. Clement, together with his SCOTUS clerkship, and role in the Solicitor General's office would provide Mr. Clement with the trifecta for a path to becoming a Supreme Court Justice. Therefore, he should likely relish the appointment.

Respectfully submitted,



Christopher Hadsell, Petitioner
November 9, 2020

V. CERTIFICATE OF PETITIONER

Hadsell certifies that this Petition for Rehearing is: (i) presented in good faith and not for delay, and (ii) limited to substantial grounds not previously presented.

Christopher Hadsell, Petitioner
November 9, 2020