

No. 20-1318

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT W. SHACK,

Petitioner,

v.

NBC UNIVERSAL MEDIA, LLC,
IMG WORLDWIDE, INC.,
LADIES PROFESSIONAL GOLF ASSOCIATION, and
SAMSUNG ELECTRONICS AMERICA INC.

Respondents,

ON PETITION FOR WRIT OF CERTIORI TO THE
UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA

JOINT BRIEF IN OPPOSITION TO THE PETITION
FOR WRIT OF CERTIORI

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OBJECTION TO THE PETITION FOR WRIT OF CERTIORI

Respondents, NBC Universal Media, LLC, IMG Worldwide, Inc, Ladies Professional Golf Association, and Samsung Electronics Americas, Inc. object to Petitioner Vincent W. Shack's Petition for Writ of Certiorari on the grounds it is procedurally improper and the Court lacks jurisdiction to hear a direct appeal of an order from the United States District Court for the Central District of California.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, respondent NBC Universal Media, LLC, states that it is a Delaware limited liability company. NBC Universal Media, LLC's sole member is Comcast Corporation. No publicly held corporation owns 10% or more of the Comcast Corporation.

Samsung Electronics America, Inc. is 100% owned by Samsung Electronics Co. Ltd. Samsung Electronics Co. Ltd is a publicly held corporation organized under the laws of the Republic of Korea. Samsung Electronics Co. Ltd. has no parent corporation, and no publicly held corporation owns 10% or more of the stock of Samsung Electronics Co. Ltd.

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OBJECTION TO THE QUESTION PRESENTED

Respondents NBC Universal Media, LLC, IMG Worldwide, Inc, Ladies Professional Golf Association, and Samsung Electronics Americas, Inc. (collectively, “Respondents”) object to Petitioner Vincent W. Shack’s (“Petitioner”) Questions Presented because Petitioner has presented questions completely irrelevant to the decisions of both lower courts, the Ninth Circuit, and the United States District Court for the Central District of California. Petitioner states that the questions presented are whether the law affords an individual the means to prevent and redress alleged civil rights violations and whether the *Bivens* holding is applicable if a federal agent acts beyond his authority.

However, neither the decision of the Ninth Circuit, nor the trial court involved *Bivens* or whether the law affords rights to redress alleged civil rights violations. The Ninth Circuit dismissed Petitioner’s appeal on the basis it lacked jurisdiction to hear the appeal because Petitioner failed to timely file his notice of appeal. The District Court for the Central District of California dismissed Petitioner’s action on the basis it lacked subject matter jurisdiction to hear a direct appeal of a final judgment of a state court under the *Rooker-Feldman* doctrine. Accordingly, Respondents object to Petitioner’s questions presented.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a complaint against Respondents in the Superior Court of California, County of Riverside, on February 4, 2009, asserting causes of actions for intentional torts and negligence. Pet. at p. 19. Petitioner's claims arose from alleged incidents at a professional golfing event held at the Bighorn Country Club in Palm Desert. *Id.* Respondents all filed successful motions to strike Petitioner's claims pursuant to California's anti-SLAPP statute. *Id.* at p. 20.

Petitioner then appealed the state court action to the California Court of Appeal. *Id.* The Court of Appeal affirmed the Superior Court of California's decision to strike Petitioner's complaint and dismiss the action. *Id.* The California Supreme Court denied Petitioner's petition for review. *Id.*

Unhappy with the results from the state court action and appeals, Petitioner filed a complaint against Respondents in the United States District Court for the Central District of California ("District Court"), asserting violations of his civil rights pursuant to both federal law and state law. *Id.* Upon review of the First Amended Complaint, the District Court issued Petitioner an Order to Show Cause why the action should not be dismissed based on a lack of subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Id.*

After reviewing Petitioner's First Amended Complaint and response to the Court's Order to Show Cause, the District Court determined that Petitioner's action in the District Court was a de facto appeal of the decisions of the state Court of Appeal decision. *Id.* at 21. Thus, the District Court dismissed the action, holding that it lacked subject matter jurisdiction to hear an action seeking a de facto appeal over a state court decision pursuant to the *Rooker-Feldman* doctrine. *Id.*

Unsatisfied with the outcome, Petitioner sought a direct review of the District Court's Order with this Court, the United States Supreme Court by filing a Petition for Writ of Certiorari ("Petition") on July 7, 2020. *Id.* p. 17. On July 15, 2020, this Court denied and returned Petitioner's Petition finding the Court lacked jurisdiction as the Petition did not seek review of an order of the California Supreme Court or the Ninth Circuit Court of Appeals. Declaration of Vincent W. Shack in Support of Writ of Certiorari ("Shack Decl."), ¶ 5.

On September 17, 2020, the Ninth Circuit determined it lacked jurisdiction to hear Petitioner's appeal as Petitioner failed to timely file his notice of appeal. Shack Decl., ¶ 10. The Ninth Circuit further denied Petitioner's Motion for Reconsideration and informed Petitioner that it will no longer entertain any further filings in the closed matter. Ninth Circuit Order of January 11, 2021.

Petitioner then refiled the exact same petition for writ of certiorari this Court had previously returned to him for lack of jurisdiction. *See* Pet. In fact, the date on the Petition is the same as the prior filed petition. *Id.* p. 17. The Petition does not seek review of any decision by the Ninth Circuit but seeks a direct review of the District Court's order. *See* Pet. generally.

LEGAL DISCUSSION

The Petition should be denied because it is procedurally improper. 28 U.S.C. § 1254; 28 U.S.C. § 1257. The Petition invokes this Court's jurisdiction to review the judgment of the highest state court pursuant to Section 1257. However, the Petition—in fact—seeks review of the District Court for the Central District of California's dismissal of Petitioner's action. Pet. at p.1. As the Petition seeks review of a United States District Court's judgment, this Court cannot review the District Court's judgment pursuant to section 1257.

Further, Petitioner cannot invoke this Court's jurisdiction pursuant to section 1254 as Petitioner does not seek review of the Ninth Circuit's disposition of his appeal there, which was to dismiss his appeal as untimely. 28 U.S.C. § 1254. *Id.* Arguing *arguendo* that this Court has jurisdiction to hear Petitioner's appeal, the Petition is

untimely as the Petition was filed more than ten months after the District Court's dismissal of the action. 28 U.S.C. § 2101(c).

As the Petitioner was informed on denial of his original petition for writ of certiorari to this Court that this Court can only hear an appeal from the judgment of the highest court of the state or from a judgment of the Court of Appeals, this second filing of the Petition is frivolous and warrants damages pursuant to Supreme Court Rules 42 and 43.

A. Petition Does Not Seek Review of a Judgment of the California Supreme Court.

In the Petition, Petitioner states that this Court has jurisdiction to hear his appeal pursuant to Title 28, Section 1257 of the United States Code. Pet. at p. 1. Petitioner states he is invoking "this Court's jurisdiction under 28 U.S.C. § 1257" as he had timely filed the petition for a writ of certiorari."

First, Petitioner is mistaken that this Court has jurisdiction pursuant to section 1257. Section 1257 states that "[f]inal judgments or decrees rendered by the highest court of a State . . . may be reviewed by the Supreme Court by writ of certiorari". 28 U.S.C. § 1257 However, the Petition clearly indicates that Petitioner is seeking review of a judgment from the "United States District Court [for the] Central District of California". Thus, Petitioner cannot invoke this Court's jurisdiction pursuant to Section 1257.

Further, Petitioner is mistaken that he “timely filed [his] petition for writ of certiori within ninety days of the United States District Court [for the] Central District of California’s judgment.” Pet. at p.1. The Petition clearly indicates that the District Court’s order was entered on April 29, 2020. Pet. at p.1. As noted in his declaration, this Petition was filed on or about March 8, 2021, more than ten months since the entry of judgment. Thus, not only did Petitioner invoke the wrong section for this Court’s jurisdiction, the Petition is not timely.

B. Petition Also Does Not Seek Review of the Ninth Circuit’s Dismissal.

In addition, Petitioner cannot seek review in this Court pursuant to Title 28, Section 1254 of the United States Code as the Petition does not seek review of the Ninth Circuit’s dismissal of Petitioner’s appeal. As explained above, the Petition seeks review of the District Court’s dismissal of the action on the grounds the District Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine. Pet. at p. 21.

Section 1254 allows for this Court to review “[c]ases in the courts of appeals . . . [b]y writ of certiori granted upon the petition of any party to a civil action”. 28 U.S.C. § 1254. As this Court teaches, for cases to be in the court of appeals, “the appeal [must be] timely

filed and all other procedural requirements . . . met[for] the petition [to be] properly before this Court for consideration”. *United States v. Nixon*, 418 U.S. 683, 690, 94 S. Ct. 3090, 3098, 41 L. Ed. 2d 1039 (1974).

As explained above, Petitioner failed to timely appeal to the Ninth Circuit. Petitioner failed to file his notice of appeal within 30 days of the District Court’s April 29, 2020 order. Accordingly, Petitioner’s appeal was not timely and this case was not in the courts of appeals. *United States v. Nixon*, 418 U.S. at 690; 28 U.S.C. § 1254.

C. Petition is Frivolous

Lastly, the Petition is frivolous. As this Court already informed Petitioner regarding the grounds for invoking this Court’s jurisdiction to review a Petition for Certiorari-when it denied his original petition, Petitioner was well aware that he can only seek review of the judgments from the highest state court or the court of appeals. Despite this, Petitioner again seeks review in this Court of the District Court’s order. In fact, as noted in the Petition’s title page, Petitioner seeks review of the “ORDER of the United States District Court for the Central District [of] California”. Pet. at 1.

Further, contrary to Petitioner’s claim that the Petition was “timely filed”, the Petition was filed more than 10 months after the

order for which he seeks this Court's review. Under the jurisdictional statement section of the Petition, Petitioner states the District Court denied his Petition for hearing on April 29, 2020. Pet. at 1. Petition states that he is invoking this Court's jurisdiction under 28 U.S.C. § 1257 and further asserts the Petition was timely filed. However, Section 2101 states that a petition for writ of certiorari must be filed within 90 days of entry of such judgment or decree. 28 U.S.C. § 2101. Thus, the Petition is untimely.

Further, Petitioner's notice of appeal to the Ninth Circuit was also untimely. Petitioner did not file his notice of appeal to the Ninth Circuit until July 15, 2020. Pursuant to the Federal Rules of Appellate Procedure, a notice of appeal must be filed with the district court within 30 days after entry of the judgment. Fed. R. App. Proc. 4(1)(A). Thus, as Petitioner was seeking review of the District Court's order of April 29, 2020, a notice of appeal needed to be filed by May 29, 2020, which he failed to do.

As both the Petition and the Notice of Appeal were untimely and the Petition had no viable grounds to invoke this Court's jurisdiction, the Petition is frivolous. Accordingly, damages are warranted and Respondents requests damages to be assessed against Petitioner pursuant to Supreme Court Rules 42 and 43.

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

April 21, 2021

Respectfully submitted,

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