No. _____

In the Supreme Court of the United States

Mark Anthony Jenkins,

Petitioner,

v.

TIMOTHY O'ROURKE, Jefferson Parish Assistant District Attorney, Jefferson Parish Juvenile Court; ROBERT M. MURPHY, Former Judge of the Louisiana Fifth Circuit Court of Appeal; KRISTYL TREADAWAY; BARRON BURMASTER, Judge

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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July 17, 2020

QUESTIONS PRESENTED

The federal district and circuit courts failed to conduct a *de novo* review and incorrectly denied jurisdiction to this 42 U.S.C.: sec. 1983 lawsuit. It complains of the conspiracy of a state appellate judge to protect the Department of Child and Family Services, and the ADA representing it in juvenile court, from liability for negligence or fraud. The appellate judge was alerted to the trial set in juvenile court against DCFS and the payee, and he directed payee's attorney and the juvenile court judge to pretend that the district court had already decided the issue. The judge refused to rule, and the attorney presented the issue to the court of appeal on a writ application due to be filed from a unrelated district court judgment.

1. Whether the federal fifth circuit erred in not reviewing *de novo* this independent action and in dismissing it under the *Rooker-Feldman* doctrine?

2. Whether the federal courts should have found the 2015 state appellate-court judgment was made without subject matter jurisdiction, and is void *ab initio*, and by a conspiracy to prevent a stipulation in juvenile court from being considered in deciding the legal paternity issue.

3. Whether the Louisiana Fifth Circuit's 2017 affirmation of the granting of exceptions of no cause of action and *res judicata* and dismissal with prejudice of the petition to nullify the 2015 judgment bars this complaint from federal district court jurisdiction under the *Rooker-Feldman* doctrine: and whether the void *ab initio* exception to *Rooker Feldman* is necessary and proper?

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are listed in the caption.

RULE 14.1 (iii) List

The proceedings in state trial, appellate, and supreme courts, and in federal district and circuit courts identified below are directly related to the above-captioned case.

State of Louisiana Dept. of Children & Family Services, In the Interest of Mark Jenkins Jr. v. Mark Jenkins Sr., Docket No. 2003-NS-1371, Jefferson Parish Juvenile Court, Order in Minutes of July 7, 2014.

State of Louisiana Dept. of Children & Family Services In the Interest of Mark Jenkins Jr. v. Mark Jenkins Sr., Docket No. 2003-NS-1371, Jefferson Parish Juvenile Court, Minutes of September 15, 2014.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 711-419, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, Judgment signed on Feb. 4, 2015.

State of Louisiana Dept. of Children & Family Services In the Interest of Mark Jenkins Jr. v. Mark Jenkins Sr., Docket No. 2003-NS-1371, Jefferson Parish Juvenile Court, State of Louisiana, Minutes of April 27, 2015.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 15-CA- 293, Fifth Circuit Court of Appeal, State of Louisiana, Order of May 26, 2015.

Mark Anthony Jenkins v. Latasha Jackson, No. 2015-CA-399, Fifth Circuit Court of Appeal, State of Louisiana, Disposition handed down on July 31, 2015.

Mark Anthony Jenkins v. Latasha Jackson, No. 2015-CA-399, Fifth Circuit Court of Appeal, State of Louisiana; rehearing denied Sept. 2, 2015.

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 2015-CJ-1622, Supreme Court of the State of Louisiana, denied writ of *certiorari,* with one dissent, Sept. 4, 2015.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 711-419, 24th Judicial District Court, State of Louisiana, denied motion to rebut finding of a judicial confession, judgment signed Feb.1, 2016.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 711-419, 24th Judicial District Court, judgment on May 24, 2016; amended to add dismissal of petition Nov. 7, 2016.

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 16-CA-482, Fifth Circuit Court of Appeal, State of Louisiana, affirmed dismissal of petition to nullify, Feb. 22, 2017.

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 16-CA-482, Fifth Circuit Court of Appeal, State of Louisiana, denied request for rehearing March 22, 2017.

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 2017-C-0652, Supreme Court of the State of Louisiana, denied writ of *certiorari* with "one who would grant," Sept. 6, 2017.

Mark Anthony Jenkins v. Robert M. Murphy et al., United States District Court, Eastern District of Louisiana, Civil Action No. 2-18-cv-3122, dismissed complaint with prejudice Nov. 27, 2018.

Mark Anthony Jenkins v. Robert M. Murphy et al., Civil Action No. 2-18-3122, U. S. District Court, Eastern District of Louisiana, denied new trial, Jan. 14, 2019.

Mark Anthony Jenkins v. Timothy O'Rourke, Jefferson Parish Assistant District Attorney, Jefferson Parish Juvenile Court, et al., United States Court of Appeals for the Fifth Circuit, No. 19-30112, affirmed district court, Jan. 10, 2020, designated "not to be reported."

Mark Anthony Jenkins v. Timothy O'Rourke, Jefferson Parish Assistant District Attorney, Jefferson Parish Juvenile Court, et al., United States Court of Appeals for the Fifth Circuit, No. 19-30112, denied rehearing *en banc* without poll, Feb. 21, 2020.

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I. If the federal courts had reviewed this 42 U.S.C. Sec. 1983 complaint *de novo,* it would have recognized it is an independent action alleging conspiracy to deny Mark

TABLE OF AUTHORITIES

CONSTITUTION AND STATUTES

OTHER SOUCES

FEDERAL CASES

LOUISIANA CONSTITUTION

LOUISIANA CASES

LOUISIANA STATUTES

Mark Anthony Jenkins respectfully *petitions for a writ of certiorari to* United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The United States Fifth Circuit, in an unpublished Opinion of January 10, 2020 (App. A1 at 1-3a), affirmed the November 27, 2018 Order & Reasons of the U. S. District Court for the Eastern District of Louisiana, (App. A2 at 4-16a), and the denial of a Request for a New Trial denied (January14, 2019.) (App. C2 at 40-42a). The Fifth Circuit then denied a request for rehearing *en banc* on February 21, 2020, treating it as a Petition for Panel Rehearing (App. C1 at 38-39a). As a result, Jenkins's 42 U.S.C.: §1983 Complaint was dismissed with prejudice.

The following are relevant opinions of the courts in chronological order.

(App. B1, at 17a sealed) Minutes of July 7, 2014 in Juvenile court show the court ordered the Department of Child and Family Services (DCFS) to produce all acknowledgments it had for Jenkins.

(App. B2 at 18a sealed) Minutes of September 14, 2014. Juvenile Court: the ADA stated that DCFS had no authentic act by Mark Jenkins. but his statement was not reported in the minutes.

(B3 at 19-20a) Judgment of February 4, 2015 of 24th JDC, State of Louisiana denied an exception of prescription to amending the birth certificate; admitted the paternity test results, and ruled that Jenkins was not the father of Jackson's son.

(App. B4, at 21 sealed) Juvenile Court Minutes of April 27, 2015: attorney Kristyl Treadaway stipulated that there was no authentic act of acknowledgment by Jenkins, and the court set a hearing on legal paternity for June 15, 2015.

(App. B5 at 22- 23a) May 26, 2015 Order of Louisiana Fifth Circuit Court of Appeal denied Jackson's appeal but gave her time to file a writ application.

(App. B6 at 24a sealed) Juvenile court Minutes of June 15, 2015: the court refused to rule on legal paternity; claimed the district court had ruled on legal paternity and that the issue would be decided by the court of appeal.

(App. B7 at 25- 30a) Disposition of July 31, 2015: the La. Fifth Circuit ruled that Jenkins judicially confessed to signing an authentic act of acknowledgment.

(App. B8 at 31a) February 1, 2016 judgment of 24th Judicial District Court: denied a motion to rebut the ruling on legal paternity by the fifth circuit.

(App. B9 at 32a) May 24, 2016 judgment of the 24th JDC granted exceptions of no cause of action and *res judicata* to the Petition to Nullify.

(App. B10 at 33-34) Order of La. Fifth Circuit, 11/1/16 to amend judgment.

(App. B11 at 35a). Amended Judgment of 24th JDC, November, 7, 2016 added "dismissed with prejudice" to the Judgment of May 24, 2016.

Jenkins v. Jackson, 216 So.3d 1082, (5th Cir. 2017) affirmed the district court judgment of May 24, 2016.

JURISDICTION

The Opinion of the fifth circuit court of appeals (App. A1 at 1-3a) was

entered on January 10, 2020. A timely petition for rehearing *en banc* was denied on February 21, 2020 (App. C1 at 36-37a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Title 42 United States Code §1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, 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 decree relief was unavailable. For the purposes of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Petitioner Mark Anthony Jenkins and Latasha Jackson were not married when her son was conceived and born in 1997. He signed the birth certificate believing he was the biological father. Under Louisiana law at that time, neither their subsequent marriage nor his signing of the birth certificate made him the legal father. Only an authentic act of acknowledgment could have made Jenkins the legal father. (App. F9 at 84). They divorced in 2003.

The Department of Child and Family Services (DCFS) obtained an order for him to pay support based on a signed agreement. It did not establish legal or biological paternity as the law required. A paternity test would have prevented DCFS from obtaining agreement to pay support. Jenkins learned in May 2011 that he might not be the father of Ms. Jackson's son. He could not recall if he had signed any other document at the hospital besides the birth certificate. The Department of Health and Hospitals (DHH) produced a copy of the birth certificate and a separate statement that an original acknowledgment was destroyed during Hurricane Katrina. It did not give the form of that document. Undersigned counsel did not

realize at that time that the acknowledgment lost during Katrina was the original of the birth certificate.

Jenkins' petition, filed in district court, asked for revocation of "an acknowledgment" with no identification of its form, a court-ordered paternity test, and damages including repayment of child support from Ms. Jackson. (Complaint, p. 5) In discovery, Ms. Jackson stated she had no authentic act, and DCFS, a necessary party, refused to answer discovery requests claiming the information was "confidential."

Despite having no proof of an authentic act of acknowledgment, Jackson filed an exception of prescription to revocation of an authentic act of acknowledgment. The prescriptive period had been enacted 11 years after Jackson's son was born. The district court found prescription did not apply and ordered a paternity test. On review, the court of appeal found the prescriptive period would apply, but affirmed the right to a court-ordered paternity test. **There was no ruling on whether there was in fact an authentic act that would make him the legal father.** Undersigned counsel failed to file for writ of *certiorari* timely.

Paternity test results proved Jenkins was not the biological father. He then filed to nullify the order for support in juvenile court. He learned that DCFS received copies of every executed acknowledgment from DHH. With that information, juvenile court ordered DCFS to produce all acknowledgments by Jenkins. (App. B1at17a). In the following hearing, the assistant district attorney

reported there was no authentic act by Jenkins. However, that was not reported in the minutes. (App. B2 at 18a). Petitioner requested a correction of the minutes to report what the ADA had stated. The court set another hearing for that. In the meantime, petitioner filed for a hearing in district court to obtain a ruling on biological paternity. (App. F2 at 62-65 a) Jackson filed an exception of prescription to correcting the birth certificate. (App. F3 at 66). District court denied the exception; admitted the DNA Test Report, and ruled that petitioner Jenkins was not the father. Judgment was signed on February 4, 2015. (App. B3 at 19-20).

Jackson gave notice of intent to appeal.

On April 27, 2015, in the juvenile court hearing to correct the minutes, Jackson's attorney, defendant attorney Treadaway, stipulated there was no authentic act of acknowledgment by Jenkins. The court looked at the February 4, 2015 judgment of the district court and noted that the district court had decided that Jenkins was not the **biological** father. Juvenile court then set a hearing to decide legal paternity on June 15, 2015, as shown by the minutes. (App. B4 at 21).

Jackson filed an appeal from the district court's judgment. Petitioner opposed the appeal because the district court judgment on biological paternity did not go to the merits of the petition for damages. On May 26, 2015, the fifth circuit dismissed the appeal without prejudice and allowed 30 days to "file an appropriate writ application seeking review of the interlocutory ruling contained in the February 4, 2015 judgment." (App. B5 at 22). On May 28, 2015 petitioner Jenkins amended the

petition for damages in district court to name DCFS as a defendant and alleged negligence or fraud in failing to establish either biological or legal paternity as the basis for the support order. (App.F4 at 67-70). He also added the claim of fraud in the contract for support against Jackson.

Events of June 15, 2015 - June 23, 2015

When the hearing set in juvenile court to determine legal paternity started on June 15, 2015, Treadaway claimed that the district court had decided that Jenkins was not the legal father and that her appeal was pending. (App.F5 at 72a sealed) The juvenile court judge would not listen to a correction of that statement. He refused to rule on legal paternity (App. F5 at 72a sealed) and stated that the court of appeal had to decide legal paternity. (App. B6 at 24a sealed). He mentioned that he did not have the court record in front of him because the fifth circuit had requested it. (App. F5 at 73a sealed). Treadaway filed her writ application from the *interlocutory ruling* on June 23, 2015, and claimed that the district court had erred in ruling that Jenkins was not the legal father. (App. F at 75).

Petitioner's opposition brief pointed to the district court record to prove that only biological paternity was decided in the February 4, 2015 Judgment. (App. F7 at 77a). Petitioner Jenkins' Rule to Show Cause that resulted in the Judgment of February 4, 2015 did not raise the issue of legal paternity in district court. It asked for rebuttal of the birth certificate acknowledgment, which is not in authentic form, and which creates a presumption of biological paternity, and not legal paternity.

The DNA test report presented into evidence rebutted the presumption that petitioner Jenkins was the biological father. (App. F9 at 84a) The rule to show cause had mentioned that in juvenile court an ADA had stated that there was no authentic act of acknowledgment by Mark Jenkins. The July 31, 2015 appellate court's disposition "dismiss(ed) with prejudice what it called "respondent's [Mark Jenkins's] claim to revoke or rebut his acknowledgment of legal paternity of M.J., Jr." (App.B7 at 30)

La. Civil .Code Article 203 (App.F9 at 84) shows that only an authentic act of acknowledgment establishes legal paternity; registration of the birth certificate creates a presumption of biological paternity. The Disposition deliberately confused the two types of acknowledgment to pretend legal paternity was established by a birth certificate. Since lack of subject matter jurisdiction is the basis for nullification of Judge Murphy's judgment, and was the cause of the denial of due process; it is not necessary to explain all of the errors Judge Murphy deliberately made in the disposition. It is enough that the ruling is void *ab inito* and was the cause of the constitutional tort complained of in the federal complaint.

Request for reconsideration was denied, despite pointing out that the ruling on legal paternity was beyond the scope of supervisory review. On application for writ of *certiorari*, Louisiana Supreme Court Justice Hughes, in the only dissent to denying writ, summed up the disposition:

> Respectfully, the seemingly untimely review and intervention of the Court of Appeal to decide an issue not

> addressed in the trial court's judgment, based on the concept of a "judicial confession," is clearly wrong given the DNA evidence, the multiple pleadings and amendments thereto, the stipulation of the parties, and the inability of DCFS to produce an authentic act of acknowledgment. This is not justice but judicial "gotcha." These matters are best left to the trial court for trial on the merits and development of a full record."
>
> The continued efforts of DCFS given the DNA results in the record are also questionable. (App. C4 at 43 a).

On March 10, 2016, petitioner Jenkins filed a petition to nullify the ruling on legal paternity for lack of jurisdiction and violation of due process. (App.E3 at 54) Treadaway filed exceptions of no cause of action and *res judicata*. In the hearing on May 16, 2016, the district court judge admitted he had not ruled on legal paternity. (App F8 at 79) Despite that admission, the judge granted the exceptions of *res judicata* and no cause of action. Significantly, he did so without giving any reason. (App B9 at 32) On appeal, defendant Judge Murphy, who wrote the judgment deciding legal paternity, was on the panel to review whether he had jurisdiction to rule on legal paternity. Before issuing a decision, the state appellate court ordered the district court to add "decretal language" to its judgment. (App. B10 at 34) The district court added "dismissed with prejudice" (App. B11 at 35), which added a ruling that was not requested or given. The appellate court produced *Jenkins v. Jackson,* 16 So.3d 1082 (La. App. 2017). In it, the state appellate court gave its version of supervisory review:

> The district court has the jurisdiction to determine both the legal and biological paternity of Mark, Jr. in its review of Mr. Jenkins' petition to revoke. Because the 24th Judicial District court is a district court within our circuit, this Court had the supervisory

> jurisdiction to render determinations relevant to Mr. Jenkins' petition, which included legal and biological paternity. (App. A2 at 12a) and (App. A1 at 2a) *also Jenkins v. Jackson*, 216 So.3d 1080, 1090.

The state appellate court did not pretend that legal paternity had been decided in the district court. Its rendition of supervisory jurisdiction eliminated the need for a trial. Petitioner filed for reconsideration, arguing lack of subject matter jurisdiction on supervisory review and denial of due process. (App. E4 at 56a) It was denied. (App.C5 at 44a) Petitioner filed for writ of *certiorari* and argued the same. (App. E5 at 58 to-60a). It was denied, with Justice Hughes alone as a "would grant." (App. C6 at 45a).

On February 9, 2017 petitioner's attorney listened to a recording of a juvenile court hearing in October, 2015. It was played from the technician's office while undersigned counsel sat in a separate office at the courthouse. It did not contain the statement she remembered ADA O'Rourke made that indicated the purpose of defendants' actions was to protect DCFS. She encountered ADA O'Rourke as she exited the room. That day court was not in session, and few people were in the courthouse. She reported to the District Attorney's Office that the recording she was allowed to hear had been altered. The office reported their inquiry did not find the system's recording had been touched. (Complaint p.14 to16, ROA 10).

On March 22, 2018 petitioner filed the 42 U.S.C. §1983 complaint in federal court. (ROA 10) For the first time he brought suit against the state actors and made

the first allegations of conspiracy to deprive him of due process rights under the U.S. Constitution. The complaint also alleged corruption of the judicial process to obtain a favorable decision. (Complaint p.17) The actions of the conspirators from June 15, 2015 through June 23, 2015, as given on pages 7 to 8 *supra*, were recited. Court records proving the allegations were included in the Amendment to the Complaint. Petitioner Jenkins requested damages and nullification of the void *ab initio* ruling on legal paternity. He stated that the state district court suit was still pending because claims against Jackson and DCFS for fraud had not yet been decided. (Complaint p.19) Defendants filed exceptions of no cause of action, prescription, judicial immunity, prosecutorial immunity, domestic relations abstention, and lack of jurisdiction under the *Rooker-Feldman* doctrine.

The federal courts did not review the judgments.

The district court's Order & Reasons of November 27, 2018 (A2 at 4-16a) quoted *Jenkins v. Jackson* exclusively and did not mention the state court records. There was no *de novo* review to ensure that the court was not dismissing a compliant that was "properly within the cognizance of the federal courts." *Target Target Media Partners v. Specialty Marketing Corp.*, 881 F.3d 1279, 1279 Essentially, it ruled that the court of appeal had subject matter jurisdiction to rule on legal paternity in 2015 because *Jenkins v. Jackson* claimed that it did. It did not take notice that there was no ruling on legal paternity at trial. It accepted and quoted as determinative the incorrect and self-serving version of supervisory

jurisdiction composed by the Louisiana Fifth Circuit. The federal district court decided it was unnecessary to determine the circuit court's position on the void *ab initio* exception because the state appellate court had subject matter jurisdiction, and it dismissed with prejudice all motions. Petitioner filed for a new trial on December 21, 2018 arguing that the ruling was manifestly erroneous in finding the state fifth circuit had subject matter jurisdiction. The motion pointed out that the state appellate court had decided an issue that was never tried, and it pointed out that the *Jenkins* version of jurisdiction dispensed with a trial before a review. The Motion was denied on January 14, 2019 (App.C2 at 38-40a) for failure to state a manifest error."

Petitioner filed a Notice of Appeal on February 11, 2019. Review of a district court's subject matter jurisdiction is to be *de novo. Truong v. Bank of America, N.A.*, 717 F.3d 377, 381 (5th Cir. 2013). Instead, the circuit court also deferred entirely to the state appellate court's decision. The Opinion (A1 at 1-3a) quoted only *Jenkins v. Jackson.* The circuit court relied on the state appellate court's version of supervisory jurisdiction (App A1 at 2a) that dispensed with the need for a trial before the appellate court could review the issue.

The circuit court listed the *Exxon Mobil* requirements to make a state court judgment immune from lower court review, but failed to recognize that the cause of the injury to Jenkins' right to due process of law was ruling without subject matter jurisdiction, not the 2015 judgment itself. It quoted *Jenkins v. Jackson* but did not

notice that under *Exxon Mobil*, that judgment did not cause petitioner's injury either. As a result of those failures, the circuit court affirmed the dismissal with prejudice of the 42 U.S.C.: sec.1983 complaint and its independent actions for conspiracy and corruption. A petition for rehearing *en banc* was filed on January 24, 2020, and denied on February 21, 2020. (App. C1 at 38-39a) Mandate issued on March 2, 2020. (App D at 48-49a)

REASONS FOR GRANTING WRITS

I. The 42 U.S.C. Sec. 1983 complaint is an independent action alleging conspiracy to deny Mark Anthony Jenkins the right to a trial and corruption of the judicial process. The fact that in the course of that conspiracy the state appellate court made a void *ab inito* judgment in 2015; and in 2017 another judgment tried to ratify the earlier judgment, does not bar this action from federal district court.

"... nor shall any State deprive any person of life, liberty, or property, without due process of law..." Constitution of the United States, Amendment XIV, Section 1. (App.F9 at 82) ..."The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Constitution of the United States, Amendment XIV, Section 5. (App.F9 at 82). 42 U.S.C.: Sec.1983 was enacted to enforce the Fourteenth Amendment. M*aine v. Thiboutot*, 448 U.S. 1,100 S.Ct. 2502, 2504, 65 L.Ed.2d 555 (1980). 42 U.S.C.: Sec.1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the

> District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. App. F9 at 82.

There is no doubt that state district court had not decided if there was an authentic act of acknowledgment or whether petitioner Jenkins was the legal father in its February 4, 2015 judgment. The state appellate court did not attempt to dispute that fact in *Jenkins v. Jenkins.* Yet it claimed supervisory jurisdiction to decide those issues on the writ application from the February 4, 2015 judgment. The juvenile court judge himself set the legal paternity issue for a hearing on June 15, 2015. However, on the day of the trial he and opposing counsel pretended that the district court had decided legal paternity. Opposing counsel, defendant Treadaway, falsely presented the issue to the appellate court in her writ application. Judge Murphy wrote the disposition on legal paternity as was planned.

This civil rights action for denial of a trial was dismissed with prejudice as being barred from federal district court jurisdiction by the *Rooker-Feldman* doctrine without consideration of the court records and *de novo* review of either of the appellate court's judgments. The following shows that the *Rooker-Feldman* doctrine does not bar either state court ruling from review by the district court and that dismissal of this action was improper.

A. *Exxon Mobil* pointed out that federal courts had been giving an overbroad interpretation of the *Rooker-Feldman* doctrine, and as a result, cases that they had a duty to hear were incorrectly dismissed.

The *Rooker-Feldman* doctrine arose from two court decisions interpreting 28 U.S.C.§ 1257(a); which was "designed to prohibit end-runs around state court judgments that might occur when parties go to federal court essentially seeking review of a state-court decision." *Kovacic v. Cuy. County Dept. of Children and Family Services,* 606 F.3d 301,308 (6th Cir. 2010). 28 U.S.C. §1257(a) limits review of final judgments or decrees by the highest court of the State to *certiorari* by the United States Supreme Court. "*Rooker-Feldman* eliminates federal court jurisdiction over those cases that are essentially an appeal by a state court loser seeking to re litigate a claim that has already been decided in a state court." *Target Media Partners at* 1279. In *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 LEd. 362 (1923), the Supreme Court affirmed denial of district court jurisdiction to review a state court judgment. *Exxon Mobil* explained that in *Rooker*, the state court had acted within its jurisdiction: it was not an action to nullify the state court judgment. *Exxon Mobil* at 284. Also, in *Rooker* "the parties in federal court were the same parties who had litigated in state court." *Target* at 1285. That indicates preclusion in *Rooker* that does not pertain to Mr. Jenkins' case. In *D.C Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206

(1983) the complaint essentially "invited federal courts of first instance to review and reverse unfavorable state court judgments." *Exxon Mobil* at 283. In *Feldman*, there was no allegation that the state court judgment was void *ab initio* or obtained by corruption as in this action.

While finality of the state court judgment is emphasized in the above, states have different definitions of what is a final judgment. In Louisiana, the law provides: "A judgment that determines the merits in whole or in part is a final judgment." La. C.C.P. art. 1841. As the jurisprudence on void *ab initio* judgments will show below, a final judgment is not required for a void *ab initio* judgment to be reviewable by federal court.

1) *Exxon Mobil Corp.* limited the *Rooker-Feldman* doctrine under state preclusion law and four additional requirements. .

> Nor does § 1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. **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 he was a party..., there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion."** *GASH Assoc. v. Rosemont*, 995 F. 2d 726,728 (CA7 1993); accord *Noel v. Hall*, 341 F.3d 1148, 1163-1164 (CA9 2003). *Exxon* Mobil at 293. (Emphasis added.)

"...[A] suit may be brought in federal court, and the federal court cannot avoid jurisdiction under *Rooker-Feldman,* so long as the federal claim that is raised is independent of any claim raised in state court." *Target Media Partners at* 1289.

Exxon Mobil explained that "Under 28 U.S.C.§1738, federal courts must "give the same preclusive effect to a state-court judgment as another court of that State would give. *Parsons Steel, Inc. v. First Alabama Bank,* 474 U.S. 518, 523. "Preclusion is not a jurisdictional matter. See Fed. Rule Civ. Proc. 8(c)." *Exxon Mobil* at 293. *Burciaga* stated: "We generally do not apply *Rooker-Feldman* to state decisions that would not be given preclusive effect under doctrines of *res judicata* or collateral estoppel." *Id.* at 387. Under La. R.S. 13: 4231, "... a valid and final judgment is conclusive between the same parties." Besides not ruling on the issue of subject matter jurisdiction, as will be shown, the parties in *Jenkins v. Jackson* are not the same as the parties to this lawsuit. *Jenkins v. Jackson* does not preclude a ruling on subject matter jurisdiction in the lower federal courts in this case.

Exxon Mobil provided four requirements for *Rooker-Feldman* to bar federal district court jurisdiction to review a state court judgment: (1) The federal plaintiff lost in state court; (2) the plaintiff "complain[s] of injuries caused by [the] state-court judgments"; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." *Exxon Mobil* at 281. "The second and the fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim." *Great Western Mining & Mineral Company v. Fox Rothschild, LLP,* 615 F.3d 159,166 (3rd Cir. 2010).

2) Jenkins' independent claims

Petitioner Jenkins' claims in this 42 U.S.C.: § 1983 action are conspiracy to deny due process of law and corruption of the judicial process to obtain a favorable judgment. Those claims are not the same as the claims in state court against Latasha Jackson and DCFS for reimbursement of child support due to fraud. Also, as events in state court proved, bringing a claim for conspiracy against the state court judges and the ADA in state court would have been futile. This cause of action only had a chance in federal court. The documented facts showing planning and coordination among the defendants have been listed *supra*. In addition, statements of attorney Treadaway and the juvenile court judge in the transcript of June 15, 2015 show they knew the appellate court would take up the issue without jurisdiction, and they agreed to tell the same lie. Most revealing is the juvenile court judge's statement that he did not have the court record because the court of appeals had "**requested** "it. That proves that a judge, obviously Judge Murphy, had requested the record before the June 15, 2015 hearing to plan what had to be done for him to decide the issue. (App F5 at 73a sealed)

More than a year after the 2015 judgment was rendered defendant ADA O' Rourke was still doing the work of the conspiracy, as described *supra* on page 9. He had an altered recording of a juvenile court hearing prepared for my attorney to hear and have transcribed.

3) The Void *Ab Initio* Exception

Jenkins' argued that *Rooker-Feldman* did not apply to the 2015 judgment because it is void *ab initio.* Under that exception to *Rooker-Feldman* a federal court may review a case entered in a state court if the state court proceedings are a legal nullity and void *ab initio.*" *In re James*, 940 F.2d 46, 52, (3d.Cir. 1991). "The underlying concept is that "[a] state court judgment is subject to collateral attack if the state court lacked jurisdiction over the subject matter or the parties, or the judgment was procured through extrinsic fraud." *In re Lake*, 202 B.R. 751,758 (B.A.P.9th Cir.1996). In B*urciaga v. Deutsche Bank Nat't Trust Co.,* 871 F.3d 380 (5th Cir. 2017) the federal fifth circuit adopted the void *ab initio* exception.

> The *Rooker-Feldman* doctrine is inapplicable to Deutsche Bank's counterclaims for two, independent reasons. First, the Vacating Order was not a final judgment.... Second, the Vacating Order is void under Texas Law, and we have said the *Rooker-Feldman* doctrine would likely not bar federal court review of void state court judgments). *Id.* at 386.

According to *Burciaga,* if the state court ruling is void *ab initio* under state law, it need not be a final judgment for it to be reviewable by the federal district court. .

B. It was not the 2015 judgment itself that caused the constitutional injury complained of by petitioner Mark Anthony Jenkins, but the denial of the right to be heard in trial court.

The court records on the 2015 ruling on legal paternity show that there is no question of fact or law that the 2015 ruling on legal paternity was made without subject matter jurisdiction, and is void *ab initio.* When the state appellate court

took up and decided the issue it violated federal and state constitutions and jurisprudence. The Fourteenth Amendment provides: "...nor shall any State deprive any person of life, liberty, or property, without due process of law." Due process means that "(P)ersons whose rights may be affected by State action are entitled to be heard, and in order that they may enjoy that right, they must first be notified." *Baldwin v. Hale,* 68 U.S. (1 Wall.) 223, 17 L.Ed. 531(1864). The right to notice means that:

> (P)rior to an action which will affect an interest in life, liberty or property protected by the Due Process Clause, a State must provide notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust,* 339 U.S. 306, 314; 70 S.Ct.652; 94 L.Ed. 865, 873 (1950); see also *Green v. Lindsey,* 456 U.S. 444,449-450; 102 S.Ct.1874; 72 L.Ed.249 (1982).

Louisiana law provides: "A final judgment shall be annulled if it is rendered: (2) Against a defendant who has not been served with process as required by law.... (3) By a court which does not have subject matter jurisdiction over the matter of the suit." La. C.C.P. art 2002. The Louisiana Supreme Court dealt with violation of the right to notice by a court of appeal in W*ooley v. Lucksinger,* 3 So.3d 311, (La. 2008). In that case, the trial court made a ruling on choice of law, and the parties agreed to it. However, on appeal, and with no assignment of error regarding the choice of law issue, the court of appeal re-decided the ruling. The Supreme Court stated:

> Even had there been justification for the court of appeal's re-determination of the choice of law decision, the appellate court committed error in failing to give the litigants notice of its *sua sponte*

> determination or to provide the litigants with an opportunity to be heard on the issue....The court of appeal's failure to provide notice to the parties was especially egregious. *Wooley* at 364-5

The Louisiana Constitution divided jurisdiction: giving district courts original jurisdiction (Art. 5§16); and courts of appeal, appellate and supervisory jurisdiction. (Art. 5§10). "Jurisdiction cannot be conferred by consent of the parties or waived; a judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void." *Jean Boudreaux et al. v. The State of Louisiana, DTD,* La. LEXIS 177, 815 So.2d 7, 12 (La. 02/26/02). In *Church Point Wholesale Beverage Co., Inc. Tarver*, 614 So.2d 698 (La.1993), the Louisiana Supreme Court ruled on whether it would decide issues not yet tried in conjunction with a ruling on the constitutionality of a statute, as permitted by Article 5, § 5(F) of Louisiana Constitution. The Court held: "We do not, however, interpret Article 5, § 5(F) to mean that we have appellate jurisdiction over all issues raised in the plaintiff's petition but only those which have been ruled on by the trial court." *Id.* at 701.

However, in spite of the clear law, the state appellate court, ruled on an issue that had not been decided in the trial court. A supervisory writ correctly reporting the trial court's error and a trial on the issue that gave all parties the opportunity to have their evidence on record provides notice and the right to be heard in the court of appeal. If a party misrepresents the trial court's judgment, the court of appeal must refuse to take up the issue, and the attorney should face sanctions.

La. C.C.P. art 2005 requires that an action to nullify an appellate court's ruling can only succeed "if the ground for nullity did not appear in the record of appeal or was not considered by the appellate court." In this case, the grounds for nullity were on the face of the record and argued in the opposition brief and on request for reconsideration. However, the state appellate court ignored its lack of supervisory subject matter jurisdiction, and its judgment is void *ab initio.*

Also, the void *ab initio* 2015 judgment is not protected from federal court review by *Rooker-Feldman* under *Exxon Mobil,* which requires that the state court judgment must itself be the cause of the injury complained of. In this case, it was the lack of jurisdiction and usurpation of the issue that caused petitioner's injury. The 2015 judgment does not bar federal court jurisdiction of this action requesting annulment. Also, federal court jurisdiction of this civil rights action is not precluded under the Louisiana law as *res judicata* because none of the defendants in this federal complaint were parties to the state court litigation, and the issues of conspiracy and corruption were not presented in state court.

C. *Exxon Mobil*'s causation requirement for *Rooker-Feldman* to apply shows that *Jenkins v. Jackson* is also not protected from review .

The judgment in *Jenkins v. Jackson* was not the cause of the injury complained of in this civil rights action. *Hoblock v. Albany County Board of Election,* 422 F.3d 77,87-88 (2nd Cir. 2005) explained that a ruling that "simply ratified, acquiesced in, or left unpunished by it" the constitutional injury inflicted by a prior ruling did not

cause the injury. It gave the example of a plaintiff in state court who lost in a discrimination claim against his employer and brought the same suit in federal court, "he will be seeking a decision from the federal court that denies the state court's conclusion that the employer is not liable, but he will not be alleging injury from the state court judgment. Instead, he will be alleging injury based on the employer's discrimination." When a litigant is not "complaining of an injury caused by a state-court judgment," it is an independent claim. *Jenkins v. Jackson* refused to correct the injury caused by its 2015 ruling without subject matter jurisdiction. Under *Exxon Mobil*, the requirement that the state court judgment itself caused the constitutional injury to petitioner to protect the judgment from review is not met by *Jenkins v. Jackson.*

Review shows that *Jenkins v. Jackson 's dicta* is not a ruling on whether the state appellate court had subject matter jurisdiction to decide legal paternity. The district court granted the exceptions of no cause of action and *res judicata* without giving a reason. (App B9 at 32a) The transcript of the 2016 hearing on the exceptions (App F8 at 79a) shows that the district court judge admitted that he had not ruled on legal paternity. He then immediately changed the subject to prescription, and stated that the action to nullify had prescribed. He went on to grant the exceptions without mentioning whether the court of appeal had subject matter jurisdiction to decide legal paternity. (App.F8 at 81a) By not ruling on whether the state appellate court had subject matter jurisdiction to decide legal

paternity, the district court deprived the court of appeal of the right to review the subject matter jurisdiction issue. *Jenkins v. Jackson's* defense of the court of appeal's jurisdiction in 2015 is *dicta*.

On page 1090, in its *dicta* five pages before it rendered its decree, *Jenkins* stated: "We find that the trial court properly sustained Ms. Jackson's exception of no cause of action on the claim of lack of subject matter jurisdiction raised in Mr. Jenkins' petition for nullification" The decree itself on page 1095 made no mention of subject matter jurisdiction.

Review also shows that *Jenkins v. Jackson* deliberately misrepresented the law on supervisory jurisdiction to justify its 2015 ruling *ab initio*. It stated:

> In the instant matter, this court reviewed supervisory writ applications arising from Mr. Jenkins' petition for revocation of acknowledgment of paternity.... The district court had the jurisdiction to determine both the legal and biological paternity of Mark, Jr. in its review of Mr. Jenkins' petition to revoke. Because the 24th Judicial District court is a district court within our circuit, this Court had the supervisory jurisdiction to render determinations relevant to Mr. Jenkins' petition, which included legal and biological paternity of Mark, Jr. (App. A2 at 12a) and (App. A1 at 2a) *Jenkins at* 1090. Emphasis added.

The expression "arising from the petition" refers to issues on an appeal; not to issues on a supervisory writ from an interlocutory judgment. *League Central Credit Union v. Gagliano*, 261 So.2d 715 (La. App.1972). In the above statement, the state appellate court actually claimed it had jurisdiction to decide any issue related to the petition before a trial court ruled on it. The district court and circuit court did not take notice of that misrepresentation.

II. The void *ab initio* exception to the *Rooker-Feldman* doctrine is proper and necessary to give access to federal district court for a 42 U.S.C.: §1983 action requesting damages and nullification of a state-court judgment, when the state supreme court denied writ of *certiorari*.

The *Rooker-Feldman* doctrine by itself does not distinguish between state court judgments and decrees that are valid and those that are void *ab initio*. That is why the void *ab initio* exception is needed to complement *Rooker-Feldman*. It would give notice to state court judges that ruling without jurisdiction can make them liable for damages under 42 U.S.C.:Sec.1983 in federal court. A litigant should have recourse to federal lower court when the state courts will not void a judgment made without subject matter jurisdiction.

There is a split in the circuits on the void *ab initio* exception to *Rooker-Feldman*. It applies to this complaint because the federal fifth circuit adopted it in *Burciaga*. The fifth circuit's position on the void *ab initio* was not clear before *Burciaga*, when the Louisiana appellate judge decided legal paternity. But it is clear now: "*Rooker –Feldman* does not preclude review of void state court judgments." *Id.* at 385.

Rooker-Feldman without the void *ab initio* exception can be misinterpreted to protect from a 42 U.S.C.: §1983 action, and thereby gives legal effect to a constitutionally repugnant void *ab initio* ruling. *Rooker-Feldman* should be narrowly interpreted, with special attention to the causation requirement, so as not

to thwart the purpose of 42 U.S.C. sec.1983 that protects Fourteenth Amendment rights. Petitioner's case demonstrates that a powerful appellate judge can usurp original jurisdiction and go uncorrected in state court. The void *ab initio* exception removes "great protections to the most devious parties," and a "powerful incentive to use... fraudulent tactics in obtaining a judgment." Restatement (Second) of Judgments § 70 cmt. a (1982). "The 42 U.S.C. §1983 "action for damages offers the only realistic avenue for vindication of constitutional guarantees." *Harlow v. Fitzgerald,* 457 U.S. 800, 814, 73L.Ed 2d 396, 102 S.Ct. 2727, 2736. (1982). It supplies "by opposite and rival interests the defect of better motives" upon which our government was designed. *Buckley v. Valeo,* 434 U.S.1, 122-123 (1976) quoting *Federalist No. 51.*

The void *ab initio* exception concurs with *Exxon Mobil,* judicial immunity, and the concept of nullification. Judges are rightfully accorded judicial immunity from every judicial act except ruling without subject matter jurisdiction. *Adams v. McIlhany,* 764 F.2d 294,297 (5th Cir.1985), cert. denied, 474 U.S. 1101, 106 S.Ct.883, 88 L.Ed.2d 918(1986). *Norton v. Shelby County,* 118 U.S.425, 6 L.Ed.178 (1886), recognized that "An unconstitutional act is not a law;...it is in legal contemplation, as inoperative as though it had never been passed." *Id.* at 442. *Perlstein v. Wolk,* 844 N.E.2d 923, 218 Ill.2d 448, 300 Ill.Dec. 480 (Ill.2006) stated:

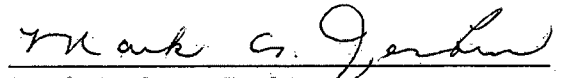
> A constitutionally repugnant enactment suddenly cuts off rights that are guaranteed to every citizen, ... perverts the duties owed to those citizens. To hold that a judicial decision that declared a statute unconstitutional is retroactive would forever prevent those injured

> under the unconstitutional legislative act from receiving a remedy for the deprivation of a guaranteed right." *Gersh,* 135 Ill.2d at 397-98, 142 Ill.Dec.767, 553 N.E.2d 281.

That also applies to a ruling that is void *ab initio.*

Wherefore, Petitioner, Mark Anthony Jenkins, respectfully requests that this Honorable Court grant writ of *certiorari.*

Respectfully submitted,



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Drafted by Cecelia Farace Abadie , La. Bar 19874, 20 White Drive,, Hammond, Louisiana 70401, 985-542-7859, cfabadie@gmail.com. This action to prescribe on July 19, 2020; unable to obtain another counsel of record; Abadie not admitted to bar due to pending disciplinary action on a complaint by the defendant attorney whom Abadie accused of collusion with the judges.