

No. 20-433

*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 A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

BRIEF IN OPPOSITION ON BEHALF OF TIMOTHY O'ROURKE

---

PAUL D. CONNICK, JR.  
DISTRICT ATTORNEY

By: s/ Darren A. Allemand  
DARREN A. ALLEMAND #34847  
COUNSEL FOR TIMOTHY O'ROURKE  
ASSISTANT DISTRICT ATTORNEY  
200 DERBIGNY STREET  
GRETNA, LOUISIANA 70053  
(504) 368-1020

## QUESTION PRESENTED

1. Whether the United States District Court and the United States Court of Appeals for the Fifth Circuit erred in dismissing the Petitioner's claims against ADA Timothy O'Rourke under the *Rooker-Feldman* doctrine so as to warrant the exercise of this Court's jurisdiction.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	1
REASONS FOR DENYING THE PETITION .....	2
CONCLUSION.....	9

## TABLE OF AUTHORITIES

### *Cases*

<i>Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs</i> , 398 U.S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970).....	6
<i>Doe v. Fla. Bar</i> , 630 F.3d 1336 (11 <sup>th</sup> Cir. 2011).....	4
<i>Exxon Mobil Corp. v. Saudi Basic Indus. Corp.</i> , 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005).....	passim
<i>GASH Assocs. v. Village of Rosemont, III</i> , 995 F.2d 726 (7 <sup>th</sup> Cir. 1993).....	3,4
<i>Jenkins v. Murphy</i> , 2018 WL 6182441 (E.D. La. 2018).....	passim
<i>Jenkins v. O'Rourke</i> , 789 Fed.Appx. 495 (5 <sup>th</sup> Cir. 2020).....	passim
<i>Kastner v. Tex. Bd. Of Law Examiners</i> , 408 F.Appx. 777 (5 <sup>th</sup> Cir. 2010).....	4
<i>Lance v. Dennis</i> , 546 U.S. 459, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006).....	3
<i>Morris v. Am. Home Mortg. Servicing, Inc.</i> , 443 F.Appx. 22 (5 <sup>th</sup> Cir. 2011).....	5
<i>Mosley v. Bowie Cnty. Tex.</i> , 275 F.Appx. 327 (5 <sup>th</sup> Cir. 2008).....	5
<i>Noel v. Hall</i> , 341 F.3d 1148 (9 <sup>th</sup> Cir. 2003).....	5
<i>Pease v. First Nat'l Bank</i> , 335 F. Appx 412 (5 <sup>th</sup> Cir. 2009).....	6
<i>Randolph v. Texaco Incorporation</i> , 471 F.Appx. 416 (5 <sup>th</sup> Cir. 2012).....	6

<i>Scott v. Fortenberry</i> , 278 F.Appx. 440 (5 <sup>th</sup> Cir. 2008).....	5
<i>Skinner v. Switzer</i> , 562 U.S. 521, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011).....	4
<i>Stabler v. Ryan</i> , 949 F. Supp. 2d 663 (E.D. La. 2013).....	6
<i>Truong v. Bank of America, N.A.</i> , 717 F.3d 377 (5 <sup>th</sup> Cir. 2013).....	4,6
<i>Turner v. Chase</i> , 334 F. Appx 657 (5th Cir. 2009).....	6
<i>Union Planters Bank Nat'l Ass'n v. Salih</i> , 369 F.3d 457 (5 <sup>th</sup> Cir. 2004).....	3
<i>Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.</i> , 535 U.S. 635, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002).....	4
<i>Weaver v. Tex Capital Bank N.A.</i> , 600 F.3d 900 (5 <sup>th</sup> Cir. 2011).....	3

## ***Rules***

Fed. R. Civ. P. 12.....	2
-------------------------	---

## INTRODUCTION

Throughout the proceedings in the United States District Court, the United States Court of Appeals for the Fifth Circuit, and now this Court, the Petitioner has sought to essentially have the Federal Courts review the Louisiana State Court rulings in his family law proceedings and in doing so has made and continues to make false and incredible allegations of a “conspiracy” involving ADA Timothy O’Rourke, an appellate judge, a juvenile judge, and a private attorney. The lower federal courts correctly held the Petitioner’s action to be barred by the *Rooker-Feldman* doctrine. This Court need not and should not grant certiorari to review the correct decisions of the courts below.

## STATEMENT OF THE CASE

The Petitioner was involved in protracted litigation in state court relative to issues of family law, expounded on in detail by the United States District Court in its ruling granting the Respondents’ motions to dismiss. *Jenkins v. Murphy*, 2018 WL 6182441 (E.D. La. 2018). On March 22, 2018, the Petitioner filed the instant action (which he later amended) in the United States District Court, in which he argued that the Louisiana Fifth Circuit Court of Appeal lacked subject matter jurisdiction relative to a July 31, 2015 order in a writ application before that Court. ROA.10-184. The Petitioner named Assistant District Attorney Timothy O’Rourke as a Defendant (now Respondent) and made allegations relative to a “conspiracy” in which ADA O’Rourke, two Louisiana state judges, and a private attorney supposedly “conspired” to deny him due process in the state court proceedings and “conspired” to have the

Louisiana Fifth Circuit Court of Appeal “usurp” the authority of the Jefferson Parish Juvenile Court. ROA.10-184.

ADA O’Rourke and the other Respondents filed motions to dismiss, which the Petitioner opposed. ROA.221-616. On November 27, 2018, the United States District Court granted the motions to dismiss based upon the *Rooker-Feldman* doctrine and Fed. R. Civ. P. 12(b)(1); in so ruling, the United States District Court did not address the alternative bases for dismissal urged by ADA O’Rourke and the other Respondents. ROA.634-647. The Petitioner filed a motion for new trial, which was denied. ROA.648-700. The Petitioner appealed, and on January 10, 2020, the United States Court of Appeals for the Fifth Circuit affirmed the United States District Court’s judgment “for essentially the reasons stated by that court.” *Jenkins v. O’Rourke*, 789 Fed.Appx. 495 (5<sup>th</sup> Cir. 2020). The Petitioner has now filed a petition for writ of certiorari with this Court (which the Petitioner signed himself given that his current counsel is facing disciplinary action for her handling of this case and her false and incredible allegations of a “conspiracy”). ADA Timothy O’Rourke now files the instant opposition.

### **REASONS FOR DENYING THE PETITION**

The Petitioner essentially seeks to have the Federal Courts review the Louisiana State Court rulings in his family law proceedings and in doing so makes false and incredible allegations of a “conspiracy” involving ADA O’Rourke, an appellate judge, a juvenile judge, and a private attorney. However, as the United States District Court and the United States Court of Appeals for the Fifth Circuit

found, this is barred by the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine is jurisdictional in nature. *Weaver v. Tex. Capital Bank N.A.*, 660 F. 3d 900, 904 (5th Cir. 2011). Reduced to its essence, the *Rooker-Feldman* doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments except when authorized by Congress. *Union Planters Bank Nat'l Ass'n v. Salih*, 369 F. 3d 457, 462 (5th Cir. 2004) (internal quotation marks and citation omitted); see generally 18B Charles Alan Wright et al., *Federal Practice and Procedure* § 4469.1 (2d ed. 2002 & Supp. 2012). This Court has explained that the doctrine is a narrow one and "is confined to ... cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). This Court has cautioned that in light of the "narrow ground" *Rooker-Feldman* occupies, it does not prohibit a plaintiff from "present[ing] 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." *Id.* at 284, 293 (quoting *GASH Assocs. v. Village of Rosemont, III.*, 995 F. 2d 726, 728 (7th Cir. 1993)). In these circumstances, state law preclusion principles control. *Id.* at 293; see also *Lance v. Dennis*, 546 U.S. 459, 466, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006) ("*Rooker-Feldman* is not simply preclusion by another name.").



The Fifth Circuit in *Truong v. Bank of America, N.A.*, 717 F. 3d 377 (5<sup>th</sup> Cir. 2013) discussed the two hallmarks of the *Rooker-Feldman* inquiry. One hallmark of the *Rooker-Feldman* inquiry is what the federal court is being asked to review and reject. See *Exxon Mobil*, 544 U.S. at 284. A federal district court lacks jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings." *Feldman*, 460 U.S. at 486 (emphasis added); accord *GASH Assoc*, 995 F. 2d at 728. Thus, the rule does not prohibit a district court from reviewing non-state-court decisions. See *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3, 122 S. Ct. 1753, 152 L. Ed. 2d 871 (2002) (review of executive action). It also does not bar a challenge to a rule on which a judicial decision was based if the rule was "promulgated in a non-judicial proceeding." *Feldman*, 460 U.S. at 486; see also *Skinner v. Switzer*, 562 U.S. 521, 131 S. Ct. 1289, 1297-98, 179 L. Ed. 2d 233 (2011) (*Rooker-Feldman* does not bar a federal plaintiff's constitutional challenge to a state statute after a state court has construed the statute adversely to the plaintiff). Thus, in *Feldman*, the district court could not hear a bar examination applicant's claim that the District of Columbia Court of Appeals had violated his due process rights by acting arbitrarily and capriciously in rejecting his petition. 460 U.S. at 486-87. The district court could, however, hear his constitutional challenge to the bar admissions rule the Court of Appeals had applied in reaching its decision. *Id.* at 487; see also *Doe v. Fla. Bar*, 630 F.3d 1336, 1341-42 (11th Cir. 2011) (*Rooker-Feldman* bars as-applied constitutional challenges, but not facial challenges); *Kastner v. Tex. Bd., of Law Exam'rs*, 408 F. Appx 777, 779 (5th Cir. 2010) (same).

The second hallmark of the *Rooker-Feldman* inquiry is the source of the federal plaintiff's alleged injury. See *Exxon Mobil*, 544 U.S. at 284. In a decision that the *Exxon Mobil* Court cited with approval, the Ninth Circuit held that if a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003); see also *Morris v. Am. Home Mortg. Servicing, Inc.*, 443 F. Appx 22, 24 (5th Cir. 2011) (federal plaintiff's claim that a foreclosure judgment is unlawful is barred "because he is complaining of injuries caused by the state court judgments"); *Scott v. Fortenberry*, 278 F. Appx 440, 441 (5th Cir. 2008) (*Rooker-Feldman* does not bar a § 1983 plaintiff's claim for damages arising from court reporter's failure to prepare a trial transcript and consequent delay of his criminal appeal because the suit did not challenge his conviction); *Mosley v. Bowie Cnty. Tex.*, 275 F. Appx 327, 328-29 (5th Cir. 2008) (*Rooker-Feldman* bars a claim that a state child support order is void, but not a claim that state government defendants violated the federal plaintiffs' constitutional rights in the course of enforcing the order).

*Rooker-Feldman* bars claims that are "inextricably intertwined" with the state court judgment. As the *Exxon Mobil* Court reiterated, the *Feldman* Court adopted this language only to explain that a "state court loser" cannot invite a federal district court to "sit in direct review of state court decisions" by asserting constitutional

claims that the state court had not directly addressed. *Exxon Mobil*, 544 U.S. at 286 n.1; *Feldman*, 460 U.S. at 482 n.16 (quoting *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 296, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970)). The *Feldman* Court repeated this phrase when this precise situation arose in that case: The federal plaintiff could not assert a claim in federal court that the District of Columbia Court of Appeals' adverse decision deprived him of his constitutional due process rights, even when he had not raised this argument before the Court of Appeals. 460 U.S. at 486-87; see also *Randolph v. Texaco Incorporation*, 471 F. Appx 416, 417 (5th Cir. 2012) (*Rooker-Feldman* bars constitutional claims that "essentially attack[]" a state-court judgment); *Pease v. First Nat'l Bank*, 335 F. Appx 412, 415 (5th Cir. 2009) (*Rooker-Feldman* bars a federal plaintiff's § 1983 claim challenging an adverse foreclosure judgment as a constitutional due process violation).

In *Stabler v. Ryan*, 949 F. Supp. 2d 663, 666-68 (E.D. La. 2013), the Court points out this distinction from *Truong*, and holds that the *Rooker-Feldman* doctrine precludes federal subject matter jurisdiction where the plaintiff is seeking relief from the state court judgment itself. In support of its conclusion, *Stabler* states, "*Rooker-Feldman* bars 'cases brought by state court losers complaining of injuries caused by state-court judgment rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Stabler*, 949 F. Supp. 2d at 666 (citing *Exxon Mobil Corp. v. Saudi Basic Inds. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)). See also *Turner v. Chase*, 334 F. Appx 657 (5th Cir. 2009). *Turner* involved a federal court challenge to a state court divorce

judgment, in which the plaintiff asked that the federal court vacate the judgment due to allegations that, inter alia, the judgment was "obtained by fraud." *Id.* at 659. The Fifth Circuit affirmed the district court's dismissal of the case as "squarely within the category of cases covered by the *Rooker-Feldman* doctrine," since "the complaint clearly comprised a collateral attack on the state court's judgment." *Id.* at 660.

In its decision below, the United States District Court noted the four elements of the *Rooker-Feldman* doctrine: (1) a state-court loser; (2) alleging harm caused by a state-court judgment; (3) that was rendered before the district court proceeding began; and (4) the federal suit requests review and reversal of the state court judgment. As the United States District Court correctly concluded, all four elements are satisfied and the *Rooker-Feldman* doctrine squarely applies.

While the Petitioner seeks to exempt his action from the *Rooker-Feldman* doctrine by invoking the "void ab initio" exception in claiming that the Louisiana Fifth Circuit's ruling from July 31, 2015 is void for lack of subject-matter jurisdiction, as the United States District Court pointed out, it is unclear whether this exception is recognized by the Fifth Circuit (or by this Court). In any event, this case is certainly not the appropriate time to answer this difficult question. As noted below:

In this case, because it is clear that the July 31, 2015 order Jenkins questions is not void for lack of subject-matter jurisdiction, it is not necessary now for this Court to deduce the Fifth Circuit's current position on the void ab initio exception. Indeed, Jenkins filed a motion in the 24th Judicial District Court pursuant to Louisiana Code of Civil Procedure article 2002 seeking an order declaring the July 31, 2015 order null and void for lack of subject-matter jurisdiction. *Jenkins*, 216 So. 3d at 1087-88. The trial court sustained Jackson's exception of no cause of action, and Jenkins appealed. *Id.* at 1088. On appeal, the Louisiana court of appeal held that it did have subject-matter jurisdiction to render the July 31, 2015 order. *Id.* at 1090. Jenkins filed a writ of certiorari with the Louisiana Supreme Court challenging that ruling, and that court denied writs. *Jenkins v. Jackson*, 224 So. 3d 984 (La. 2017). Thus, Jenkins has fully litigated in the state courts the issue of whether the judgment he now seeks to overturn was void ab initio. The Louisiana state courts have held that it was not. In the lawsuit pending before this Court, Jenkins asks this Court to function as a super-appellate court and reverse the decisions of the Louisiana state courts. This is precisely the type of action that is barred by the *Rooker-Feldman* doctrine. As such, this Court lacks subject-matter jurisdiction over Jenkins' suit.

*Jenkins*, p. 9.

As such, the United States District Court's ruling (and the United States Court of Appeals for the Fifth Circuit's ruling) was correct and should be affirmed. Out of an abundance of caution, while the United States District Court and the United States Court of Appeals for the Fifth Circuit did not address ADA O'Rourke's alternative bases for dismissal, ADA O'Rourke would now reiterate and incorporate all other bases for dismissal submitted below, to wit: prescription, absolute prosecutorial immunity, failure to state a claim upon which relief can be granted, and the Domestic Relations Exception. Indeed, the applicability of these alternative bases for dismissal makes this case an even poorer vessel to further flesh out the *Rooker-Feldman* doctrine. ADA O'Rourke also categorically denies the existence of any sort of a fantastical "conspiracy" alleged by the Petitioner or any wrongdoing whatsoever.

## **CONCLUSION**

For the foregoing reasons and any other reasons apparent to this Court, ADA O'Rourke respectfully submits that the petition for a writ of certiorari should be denied.

PAUL D. CONNICK, JR.  
DISTRICT ATTORNEY

By: s/ Darren A. Allemand  
DARREN A. ALLEMAND #34847  
COUNSEL FOR TIMOTHY O'ROURKE  
ASSISTANT DISTRICT ATTORNEY  
200 DERBIGNY STREET  
GRETNA, LOUISIANA 70053  
(504) 368-1020