No. 20-659

In the Supreme Court of the United States

LARRY THOMPSON, PETITIONER

v.

PAGIEL CLARK, RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR FEDERAL COURTS SCHOLARS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[*]

Amici curiae are legal scholars who study federal jurisdiction, federal procedure, and constitutional law, and who have taught and written on the interplay between proceedings in state and federal courts.

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[*] Pursuant to Rule 37.6, amici curiae affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. All parties have provided consent for the filing of this amicus brief.

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SUMMARY OF ARGUMENT

In *New Orleans Public Service, Inc. v. New Orleans*, Justice Scalia observed that "only exceptional circumstances justify a federal court's refusal to decide a case in deference to the states." 491 U.S. 350, 368 (1989) ("*NOPSI*"). The lower court's parsimonious construction of the favorable-termination requirement stands at odds with that principle and the established framework for federal-court adjudications involving state proceedings.

Federal courts have long been permitted to hear cases that may implicate state proceedings unless doing so would interfere with ongoing state proceedings or second-guess the way a state court has decided an issue. It is perfectly consistent with that framework to allow a plaintiff to bring a 42 U.S.C. § 1983 claim arising out of a state criminal proceeding that has "formally ended in a manner not inconsistent with his innocence," *Laskar v. Hurd*, 972 F.3d 1278, 1293 (11th Cir. 2020). There is nothing to be gained, and much to be lost, by imposing the additional requirement that the state-court proceeding have "ended in a manner that affirmatively indicates" the plaintiff's innocence, as the court below wrongly held. *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018).

A. Federal litigation implicating state-court proceedings can arise in a variety of different contexts, and courts have developed established rules to address those situations. Among them are *Younger* abstention (addressing parallel litigation in state and federal court), federal ha-

beas law (involving federal-court review of state convictions), and the *Rooker-Feldman* doctrine (precluding collateral federal attacks on state judgments). The salient common threads between these doctrines are that they seek only to avoid interference with ongoing state-court proceedings and improper second-guessing of state-court judgments.

B. Petitioner's brief persuasively explains how the Second Circuit's proof-of-innocence rule would detach favorable-termination from the rule developed over centuries of common low. That rule would also mark a stark departure from well-established principles of federal court jurisdiction. There is accordingly no justification—and certainly not one based in principles of comity or federalism—for requiring a plaintiff to affirmatively establish his innocence to challenge a violation of his civil rights in connection with a now-defunct state proceeding.

ARGUMENT

I. WELL-ESTABLISHED DOCTRINES ALLOW FEDERAL LITIGATION IMPLICATING STATE PROCEEDINGS EXCEPT IN NARROW CIRCUMSTANCES.

Federal courts have established a series of prudential doctrines to avoid conflicts with state proceedings. The metes and bounds of these doctrines (*Younger* abstention, federal habeas corpus, and the *Rooker-Feldman* doctrine) may be complicated, but the animating principles are straightforward: Abstention or deference is warranted only where there is either an ongoing proceeding in state court or where a federal court challenge would improperly contradict a state court judgment.

A. *Younger* Permits Federal Litigation Implicating State-Court Proceedings Once Those Proceedings Have Concluded.

Congress most clearly spoke to the issue of parallel federal-state litigation in the Anti-Injunction Act, 28 U.S.C. § 2283. That statute generally bars federal courts from enjoining *ongoing* state court proceedings. *See id.* ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."). There is no similar federal statutory prohibition involving state proceedings that have since concluded. Congress has also carved out exceptions to the Anti-Injunction Act that are more permissive of federal litigation. Most relevant here, in *Mitchum v. Foster*, this Court held that 42 U.S.C. § 1983 "expressly authorized" federal courts to issue injunctions against state court proceedings, and that § 1983 suits accordingly do not fall within the scope of the Anti-Injunction Act's general prohibition. 407 U.S. 225, 242–43 (1972).

This Court's decision in *Younger v. Harris* provides the relevant abstention rule for § 1983 cases. That rule is largely similar to the one Congress established in the AIA. *Younger* held that federal courts generally cannot enjoin ongoing state criminal prosecutions. 401 U.S. at 53–54; *see also Samuels v. Mackell*, 401 U.S. 66, 73 (1971) (same holding for claims for declaratory relief). "Since the beginning of this country's history," *Younger* explained, there has been a "longstanding public policy against federal court interference with state court proceedings." 401 U.S. at 43. This rule derives not just from the desire to "prevent erosion of the role of the jury and avoid a duplication of legal proceedings," *id.* at 44, but also

to honor the principle of "'comity', that is, a proper respect for state functions." Where "a proceeding [is] already pending in the state court," a litigant has "an opportunity to raise [their] constitutional claims" there. *Id.* at 49. In light of these considerations, "the normal thing to do when federal courts are asked to enjoin *pending* proceedings in state courts is not to issue such injunctions." *Id.* at 45 (emphasis added).

Younger accordingly establishes a simple rule: Federal courts should abstain from challenges to ongoing state criminal proceedings in order to avoid duplicative litigation and appearing to supersede the judgment of the state court. *See Gibson v. Berryhill*, 411 U.S. 564, 577 (1973) ("*Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts.").

Younger is also subject to exceptions that narrow its prohibitive effect. Specifically, a federal court can entertain litigation where a state-court prosecution is brought in bad faith or to harass an individual; where the state criminal prosecution is patently unconstitutional; or where the state forum is inadequate. *Younger*, 401 U.S. at 49, 53; *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Trainor v. Hernandez*, 431 U.S. 434, 446–47 (1977) (declining to allow suit to proceed on the ground that state law was patently unconstitutional).

Moreover, *Younger* has no role to play when there is no case pending in state court. *Steffel v. Thompson* held that a federal court could enjoin state court proceedings where a litigant sought to enjoin a possible, future prosecution. 415 U.S. 452 (1974). That was so even though the police officers in *Steffel* had repeatedly arrested the plaintiff for allegedly unlawful conduct and threatened him with arrests in the future. 415 U.S. at 455. *See also Doran*

v. Salem Inn, Inc., 422 U.S. 922, 930 (1975) (allowing a case seeking to enjoin state criminal proceedings to proceed where no state criminal proceedings were yet ongoing). Absent a pending case, this Court held, the rationales for *Younger* are absent: "[F]ederal intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles." *Steffel*, 415 U.S. at 462.[1]

Extensions of *Younger* to state administrative proceedings have not broadened the doctrine's reach. *See Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1974) (applying the holding of *Younger* to a narrow category of civil enforcement proceedings). In two cases, the Court extended *Younger* to "state administrative proceedings of a judicial nature." Richard Fallon, Jr. et al., *Hart & Wechsler's The Federal Courts and the Federal System* 1168 (7th ed. 2015) (citing *Middlesex County Ethics Comm v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) and *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986)); *see also* Gil Seinfeld, 101 Va. L. Rev. Online 14, 20 ("[O]nly proceedings of a certain sort—those presided over by an impartial state actor—merit deference under

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[1] The ordering of the proceedings does not matter—abstention is appropriate even if a federal proceeding was pending before the state proceeding began, so long as state proceedings were instituted before a "proceeding[] of substance on the merits" in federal courts, *Hicks v. Miranda*, 422 U.S. 332 (1974); *Doran*, 422 U.S. at 922). The relevant point is that a federal court should defer to the state court only when parallel proceedings are pending.

the *Younger* doctrine."). But even there, the Court concluded that abstention is warranted only in the "exceptional" circumstances where there are ongoing "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Spring Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 73 (2013).[2]

The touchstone of the *Younger* analysis is thus whether or not a state adjudication is ongoing—nothing more. A broader "abstention requirement would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *NOPSI*, 491 U.S. at 368.

B. Federal Habeas Corpus Law Similarly Permits Litigation Involving State-Level Proceedings.

The same principles animate federal habeas corpus—the writ that is used to test the legality of detentions. *See INS v. St. Cyr.*, 533 U.S. 289, 300–02, 301 n.14 (2001). Exhaustion rules, AEDPA's relitigation limitations, and the procedural default doctrine all ensure that federal courts do not interfere with ongoing state criminal proceedings or improperly second-guess the final judgments resulting from those proceedings. But provided these hurdles are cleared, federal courts are open to hear challenges to state-court proceedings.

1. The statutory and doctrinal rules relating to ex-

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[2] Confirming its narrow scope, *Younger* abstention does not apply outside the judicial context, *i.e.*, where there is "a state judicial proceeding reviewing legislative or executive action," *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 367 (1989).

haustion ensure that federal habeas review of state criminal convictions does not occur until after state proceedings have completed. *Ex parte Royall*, which first adopted the exhaustion requirement, explained that the requirement is rooted in concerns of federal-state comity—that state courts are presumably as competent as federal courts to entertain legal challenges. 117 U.S. 241, 251–53 (1886). Congress codified the exhaustion requirement in 1948. *See* Act of June 25, 1948, § 2254, 62 Stat. 869, 967.

Today, that requirement reads as follows: "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State," subject to limited exceptions. 28 U.S.C. § 2254(b)(1)(A). And "[a]n applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C. § 2254(c).

Various doctrinal rules reinforce these requirements. *Wainwright v. Sykes*, 433 U.S. 72 (1977), established a presumption against habeas review of claims that were not first presented to state courts. And *Rose v. Lundy* held that petitions presenting both exhausted and unexhausted claims (mixed petitions) should be dismissed. 455 U.S. 509, 522 (1982). These cases "provid[e] a simple and clear instruction to potential litigants: before you bring any claims to federal court, be sure that you first have taken each one to state court." *Rose*, 455 U.S. at 520.

2. The procedural default doctrine effectuates similar goals—preserving federal-state comity by limiting the

circumstances under which litigants can collaterally attack state court judgments. It is in effect the back-end enforcement mechanism for the exhaustion requirement just described. The doctrine generally bars federal habeas review of claims that were not raised, but could have been raised, during state court proceedings. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011). Federal habeas courts will not hear procedurally defaulted claims except in narrow circumstances: a showing of cause and prejudice, *Wainwright v. Sykes*, 433 U.S. 72, 82–84 (1977), or actual innocence, *House v. Bell*, 547 U.S. 508, 536–37 (2006); *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

3. AEDPA's limitations likewise safeguard state criminal proceedings on the back end by ensuring that state criminal judgments are not open to collateral attack outside of carefully crafted limitations.

Under AEDPA, "an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings" unless the adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law" or "resulted in a decision that was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d). This provision precludes federal habeas relief so long as "fairminded jurists could disagree" about the correctness of the state court's decision. *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004). The reasons for this approach are, like *Younger* abstention and the rules governing exhaustion, rooted in federal-state comity. *See Harrington*, 562 U.S. at 103–04.

The takeaway principle from these doctrines is similar

to *Younger*: Federal courts are open to litigation involving state-court judgments, provided that state-court litigation is not ongoing and the federal litigation would not improperly second-guess the state court's determination.

C. The *Rooker-Feldman* Precludes Collateral Challenges To State Court Judgments, But Not Litigation Consistent With Those Judgments.

The narrow reach of the *Rooker-Feldman* doctrine confirms that federal courts are open to a broad array of litigation involving state-court proceedings. The doctrine counsels dismissal in a "narrow ground" of cases filed in federal court. *Skinner v. Switzer*, 562 U.S. 521, 531–32 (2011). Specifically, once a state court issues a judgment, federal courts must avoid entertaining "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 Corporation v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) (emphasis added). In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), "the parties defeated in state court . . . asked the federal court to declare" the adverse state-court judgment "null and void." *Exxon*, 544 U.S. at 284. And in *Feldman*, two plaintiffs filed suit in federal court challenging the District of Columbia Court of Appeals' decision not to waive the bar admission requirement that individuals attend an accredited law school. 460 U.S. 462 (1983). Both challenges were rejected.

But the *Rooker-Feldman* doctrine "is not triggered simply by the entry of judgment in state court." *Exxon*, 544 U.S. at 292. As relevant here, the doctrine does not prevent litigation by the state-court *winner*. A state court judgment may have claim- or issue-preclusive effects, but

no preclusion doctrine requires automatic dismissal of the case. *See Exxon*, 544 U.S. at 291–93.

* * *

Younger abstention, federal habeas law, and the *Rooker-Feldman* doctrine all reflect an overarching set of principles governing federal litigation implicating state-court proceedings. The first principle is that, once state criminal proceedings are initiated, federal courts will not interfere and will allow them to conclude. The second principle is that, once state criminal proceedings are completed, state criminal judgments are not subject to being second-guessed through collateral litigation by the *loser*, except in narrow circumstances. Otherwise, the federal courts remain open.

II. THERE IS NO BASIS FOR IMPOSING A PROOF-OF-INNOCENCE REQUIREMENT IN §1983 CASES ARISING OUT OF FAVORABLY TERMINATED STATE-COURT PROCEEDINGS.

Petitioner's and the Eleventh Circuit's understanding of the favorable-termination rule fits comfortably beside the other doctrines just described. The rule itself is easily stated: A plaintiff can bring a § 1983 claim for unlawful seizure arising out of a state criminal proceeding that has terminated in a manner "not inconsistent with his innocence." *Laskar*, 972 F.3d at 1293. Because that rule mandates that the state proceeding have terminated, it addresses the concern about parallel state-federal litigation underlying *Younger* and several federal habeas doctrines. And because that rule requires that the termination be "not inconsistent with . . . innocence," the federal proceeding does not involve improper second-guessing of a state-court judgment. *Id.* On the contrary,

the federal proceeding is consistent with the judgment because the state courts have agreed there is no basis for continued criminal prosecution.

The cases that established the favorable-termination rule focused on the same underlying considerations. In *Preiser v. Rodriguez*, this Court held that an incarcerated person seeking an injunction to restore good time credits must proceed under the federal habeas corpus statute rather than § 1983. 411 U.S. 475 (1973). The Court's holding largely focused on the interaction between those two statutes. "Congress clearly required exhaustion of adequate state remedies as a condition precedent to the invocation of federal judicial relief under [habeas] laws." *Id.* at 489. "It would wholly frustrate explicit congressional intent" were the prospective plaintiffs able to "evade this requirement by the simple expedient of putting a different label on their pleadings." *Id.* at 489-90.

But in reaching that conclusion, the Court also highlighted the parity and comity principles that underlie both federal habeas and *Younger* abstention. 411 U.S. at 490–92. For example, citing *Fay v. Noia*, 372 U.S. 391 (1963), a procedural default case, and *Ex parte Royall*, the Court explained that its ruling would "avoid the unnecessary friction . . . that would result if a lower federal court upset a state court conviction without first giving the state court system an opportunity to correct its own constitutional errors." *Preiser*, 411 U.S. at 490.

The Court relied on similar principles in foreclosing § 1983 damages claims challenging a state conviction. *See Heck v. Humphrey*, 512 U.S. 477 (1994). The prospective plaintiff in *Heck* sought damages, arguing that due process violations in his state criminal proceedings had resulted in his wrongful conviction. *Id.* at 478–79. *Heck* concluded that the plaintiff's claim was analogous to a

common-law claim for malicious prosecution, which required a plaintiff to prove that criminal proceedings had resulted in a favorable-termination. *Id.* at 484. Accordingly, *Heck* held that a § 1983 claim is cognizable only if a favorable-termination occurs. 512 U.S. at 489–90. In reaching that holding, *Heck* relied on the need to avoid duplicative litigation that second-guesses state-court judgments, which animates both federal habeas law and *Rooker-Feldman*. Indeed, *Heck* specifically cited *Rooker* as supporting "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." 512 U.S. at 486.

More recently, in *McDonough v. Smith*, this Court reaffirmed that the central principles underlying the prohibitions on federal litigation implicating state-court proceedings are the need to avoid duplicative litigation and disrespect for state-court decisions. 139 S. Ct. 2149. *McDonough* held that a §1983 claim for fabrication of evidence does not accrue until ongoing criminal proceedings against the state court defendant (and §1983 plaintiff) terminated in her favor. *Id.* at 2154–55. *McDonough* reasoned that the most natural common-law analogy for the §1983 plaintiff's fabrication claim was the tort of malicious prosecution, which included a favorable-termination requirement. But *McDonough* also based its conclusion on "the practical considerations that have previously led this Court to defer accrual of claims that would otherwise constitute an untenable collateral attack on a criminal judgment." 139 S. Ct. at 2155. Were the fabrication of evidence claim to accrue before favorable-termination, the result would be duplicative litigation in multiple courts that would "run counter to core principles of federalism, comity, consistency, and judicial economy." 139 S. Ct. at 2158 (alluding to "the problems of two-track litigation").

Those "core principles" are well-served by Petitioner's rule. When state court proceedings end in a way that is not inconsistent with a prospective plaintiff's innocence, there is by definition no ongoing state-court proceeding. Moreover, in such circumstances, the plaintiff is not collaterally attacking any state court decision—on the contrary, if the plaintiff were to succeed on her §1983 claim, that would imply the *validity* of the state court decision that accepted the state prosecutor's dismissal of charges.

Adding a proof-of-innocence requirement does not serve those "core principles" in any greater way. And as Petitioner has persuasively explained, that rule would come at the expense of both the common law and common sense. Among other perverse outcomes, requiring proof of innocence would require a potential plaintiff to *oppose* dismissal of baseless charges in order to secure a clearer indication of her innocence. No principle of federalism or comity justifies such an unconscionable result.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

Respectfully submitted.

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