No. 21-979

In the
Supreme Court of the United States

CARLA YOUNG,
Petitioner,
v.

BRIAN LUNDSTROM, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED ACCORDING TO THE PETITION

1. Whether receiving benefits pursuant to a state-court judgment is an independent claim and not an injury caused by a state-court judgment, as the Ninth Circuit held here; or it is an injury caused by the state-court judgment, or in other words, the state-court judgment is the source of that injury such that the claim falls under *Rooker-Feldman*, as the Second, Sixth, and Tenth Circuits hold, and as the Ninth Circuit has previously held.

2. Whether injunctive relief must "expressly" seek relief from the state-court judgment to fall under *Rooker-Feldman*, as the Ninth Circuit held here and with which the Fourth, Seventh, and Tenth Circuits somewhat agree; or injunctive relief that can be granted only if the state-court judgment is invalid or would effectively be nullified by the district court's action is an invitation to review and reject the state-court judgment, or is inextricably intertwined with the validity of the state-court judgment, such that the claim falls under *Rooker-Feldman*, as the Third, Eighth, and Eleventh Circuits hold and other Seventh and Tenth Circuit cases have held.

TABLE OF CONTENTS

QUESTIONS PRESENTED ACCORDING TO THE PETITION i

TABLE OF AUTHORITIES. iv

I. INTRODUCTION 1

II. STATEMENT OF THE CASE 1

A. Statement of Facts 1

1. The Parties' Marriage, Divorce, and Respondent's Attainment of Post-Marital Assets 1

2. Petitioner Obtained Non-Stipulated Orders Without Any Prior Notice to Respondent, Thus Depriving Respondent of Any and All Due Process Required Under the Fifth and Fourteenth Amendments 2

3. Ligand's Inadequate QDRO Processing Procedures 3

B. Procedural Background. 4

1. District Court Decision 4

2. The Ninth Circuit Court of Appeal's Opinion 5

III. REASONS FOR DENYING THE WRIT. 6

A. The Unpublished Opinion of the Court of Appeals Is of Import Only to the Parties and Not the Public 6

B. Background on the *Rooker-Feldman* Doctrine 7

C. The Ninth Circuit's Decision Is Consistent with *Exxon* 8

D. The Petition Identifies No Conflict in the Circuit Courts that Warrant Review 11

1. There Is No Conflict Between the Ninth Circuit and the Second, Sixth, and Tenth Circuits 11

2. There Is No Conflict Between the Ninth Circuit and the Third, Seventh, Eighth, Tenth, and Eleventh Circuits 16

E. Petitioner's Inextricably Intertwined Argument Lacks Merit 20

IV. CONCLUSION 21

TABLE OF AUTHORITIES

CASES

Bolden v. City of Topeka,
441 F.3d 1129 (10th Cir. 2006). 20

Brown v. Bowman,
668 F.3d 437 (7th Cir. 2012). 18

Casale v. Tillman,
558 F.3d 1258 (11th Cir. 2009). 19

Coles v. Granville,
448 F.3d 853 (6th Cir. 2006). 15

District of Columbia Court of Appeals v. Feldman,
460 U.S. 462 (1983). . . . . passim

Exxon Mobil v. Corp. Saudi Basic Indus. Corp.,
544 U.S. 280 (2005). . . . . *passim*

Fieger v. Ferry,
471 F.3d 637 (6th Cir. 2006). 14

Gary v. Braddock Cemetery,
517 F.3d 195 (3d Cir. 2008) 17

Great Western Mining & Mineral Co. v. Fox Rothschild LLP,
615 F.3d 159 (3d Cir. 2010) 13, 16, 17, 20

Henrichs v. Valley View Dev.,
474 F.3d 609 (9th Cir. 2007) 14

Hoblock v. Albany County Board of Elections,
422 F.3d 77 (2d Cir. 2005) 11, 12, 13, 14

Kougasian v. TMSL, Inc.,
359 F.3d 1136 (9th Cir. 2004). 6, 8, 9, 21

Layne & Bowler Corp. v. W. Well Works, Inc.,
261 U.S. 387 (1923). 6, 7

McCormick v. Braverman,
451 F.3d 382 (6th Cir. 2006). 14, 15

Milchtein v. Chisholm,
880 F.3d 895 (7th Cir. 2018). 18, 19

Mo's Express LLC v. Sopkin,
441 F.3d 1229 (10th Cir. 2006). 15

Robins v. Ritchie,
631 F.3d 919 (8th Cir. 2011). 19

Rooker v. Fidelity Trust Co.,
263 U.S. 413 (1923). . . . . passim

Sykes v. Cook County Circuit Court Probate Division, 837 F.3d 736 (7th Cir. 2016). 18

Tryer v. City of South Beloit, Illinois,
456 F.3d 744 (7th Cir. 2006). 17

STATUTES

28 U.S.C. § 1257(a). 7

29 U.S.C. §1132(a)(3) 6

I. INTRODUCTION

Petitioner seeks relief from this Court to "resolve the conflict among federal courts of appeals of how to apply *Rooker-Feldman*." Pet. 4. The Petition alleges that the Ninth Circuit misapplied the *Rooker-Feldman* doctrine as applied by this Court in *Exxon Mobil v. Corp. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) ("*Exxon*"), and that a split in the circuits justifies the granting of the Petition. The Petition should be denied because (1) it presents no important issue for this Court's consideration; (2) the Ninth Circuit did not misapply *Exxon*; and (3) there is no split among the circuits in analyzing cases presenting *Rooker-Feldman* issues.

II. STATEMENT OF THE CASE

A. Statement of Facts

1. The Parties' Marriage, Divorce, and Respondent's Attainment of Post-Marital Assets

Respondent Brian Lundstrom ("Lundstrom" or "Respondent") and Petitioner Carla Young ("Petitioner") married in 1998 and divorced on July 30, 2014, in Texas under a mutually binding decree ("Decree") which definitively divided all marital property, retirement assets, and stock options with employers at that time. Pet. App. 8. One and a half years after the Decree was entered, Lundstrom became employed by Ligand Pharmaceuticals, Inc. ("Ligand") on or about January 8, 2016. Pet. App. 73. By virtue of his employment, Lundstrom commenced participating

in the Ligand Pharmaceuticals, Inc. 401(k) Plan (the "401(k) Plan") on or about April 1, 2016. Pet. App. 74. Lundstrom was also granted company stock options pursuant to the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as Amended and Restated Effective May 23, 2016 (the "Stock Incentive Plan"). *Id.* Ligand granted Lundstrom 18,010 stock options in two lots (referred to herein as "Incentive Stock Options") under the Stock Incentive Plan and vest six to seven years after the 2014 divorce. *Id.* The 401(k) and Incentive Stock Options are Respondent's separate, post-marital assets that are Constitutionally protected under the Fifth and Fourteenth Amendments.

2. Petitioner Obtained Non-Stipulated Orders Without Any Prior Notice to Respondent, Thus Depriving Respondent of Any and All Due Process Required Under the Fifth and Fourteenth Amendments

After the divorce, Petitioner continued with intense post-divorce litigation. In September of 2016, the Texas 233rd court judge since May 2012 who entered the Decree in 2014 recused himself from the matter. When a new judge of the Texas 231st court who was unfamiliar with the Decree or Petitioner's litigation history was appointed, Petitioner and her family lawyer ("KoonsFuller") drafted the two purported domestic relations orders in question, seeking to transfer Respondent's multi-million-dollar separate post-marital assets. Pet. App. 75. In late 2017, Petitioner and KoonsFuller prepared a document which by its title purports to be a qualified domestic relations order seeking 100 percent of the benefits held in

Lundstrom's account in the 401(k) Plan (referred to herein as the "401(k) QDRO"). *Id*. Petitioner and KoonsFuller submitted the 401(k) QDRO for the Texas 231st court's signature. *Id*. Lundstrom was not notified of the fact that Petitioner had submitted the 401(k) QDRO to the Texas court at the time of the submission, not given an opportunity to review or approve the 401(k) QDRO prior to it being submitted, and not given an opportunity to contest the validity of the 401(k) QDRO at a duly noticed hearing, thus depriving Respondent of his due process rights required under the Fifth and Fourteenth Amendments. *Id*.

In late 2017 or early 2018, Petitioner and KoonsFuller also prepared a second document which by its title purports to be a domestic relations order seeking 18,010 Incentive Stock Options granted to Lundstrom (the "Stock DRO"). Pet. App. 76. Petitioner submitted the Stock DRO for the Texas 231st court's signature. *Id*. In the same surreptitious manner as before, Lundstrom was not notified of the fact that Petitioner had submitted the Stock DRO to the Texas court at the time of the submission, not given an opportunity to review or approve the Stock DRO prior to it being submitted, and most importantly not given an opportunity to contest the validity of the Stock DRO at a duly noticed hearing, thus depriving Respondent of his due process rights required under the Fifth and Fourteenth Amendments. *Id*.

3. Ligand's Inadequate QDRO Processing Procedures

Ligand was and continues to be responsible for administering the 401(k) Plan and the Incentive Stock

Plan. Pet. App. 72. In that role, Ligand is responsible for determining whether a document submitted to the plan purporting to be a qualified domestic relations order meets the standards set forth under ERISA and the plan document itself. The 401(k) QDRO and Stock DRO were sent to Ligand for processing and determination in late 2017. Pet. App. 78-79. Immediately after being notified for the first time of the existence of the orders, Respondent raised multiple issues with Ligand concerning the 401(k) QDRO's and Stock DRO's respective validity. *Id*. Because Respondent lacked the opportunity at the plenary level to contest the validity of the 401(k) QDRO and Stock DRO, he was forced to appeal the issuance of the orders with the Texas Second Court of Appeals in Fort Worth and eventually the Texas Supreme Court. Pet. App. 79. Ultimately, Ligand processed the 401(k) QDRO and Stock DRO and transferred $62,063.47 from Respondent's 401(k) account and 18,010 Incentive Stock Options. Pet. App. 79-80. At the time of the transfer, the Incentive Stock Options were valued at approximately $3.2 million dollars based on a $278 per share price and a per share exercise price of $99. Pet. App. 80. Notably, Ligand transferred the assets to Petitioner before Respondent received a final decision from the Texas Supreme Court or had an opportunity to pursue his ERISA and other federal rights. *Id*.

B. Procedural Background

1. District Court Decision

Respondent filed his original complaint against Petitioner and Ligand on December 20, 2018, and subsequently filed a First Amended Complaint ("FAC")

on June 19, 2019. Pet. App. 69-104. The FAC alleges three separate ERISA breach of fiduciary duty claims (claims 1, 2, and 3 – against Ligand), two claims for declaratory relief (claims 4 and 5 – against all defendants), two claims for equitable and injunctive relief (claims 6 and 7 – against Petitioner), and state law claims for unjust enrichment (claim 8 – against Petitioner) and breach of common law fiduciary duty (claim 9 – against Ligand). *Id*. Petitioner and Ligand each filed Motions to Dismiss under Rule 12(b) of the Federal Rules of Civil Procedure. On December 5, 2019, the district court issued an order dismissing Respondent's FAC in its entirety with prejudice, citing the *Rooker-Feldman* doctrine, a lack of Article III standing, and the failure to state a claim upon which relief can be granted. Pet. App. 7-48.

2. The Ninth Circuit Court of Appeal's Opinion

The Ninth Circuit affirmed the district court's dismissal of Claims 4 and 5 "because those claims are barred under *Rooker-Feldman*." Pet. App. 5. The Ninth Circuit found that the "district court erred by dismissing Claims 1, 2, and 6 for lack of subject matter jurisdiction under Rooker-Feldman." *Id*. The Ninth Circuit reversed the district court's "dismissal of Claims 1, 2, 3, 6, 7, 8, and 9," and remanded those claims to the district court "to consider any other defenses, including claim and issue preclusion, in the first instance." *Id*.

At issue, the Petition challenges the Ninth Circuit's reversal of the dismissal of Respondent's Sixth Cause of Action against Petitioner. *Id*. The Sixth Cause of

Action seeks equitable relief pursuant to ERISA § 502(a)(2), 29 U.S.C. §1132(a)(3), and requests the court grant an injunction "prohibiting [Petitioner] from using, transferring, or otherwise disposing of the funds that were previously held in Plaintiff's 401(k) account." Pet. App. 95. The Ninth Circuit found that this claim does "not expressly seek 'relief from the [Texas] state court judgment' or assert that Lundstrom was injured by an 'error or errors by the [Texas] state court." (citing to *Kougasian*, 359 F.3d at 1140.) Pet. App. 4-5.

III. REASONS FOR DENYING THE WRIT

A. The Unpublished Opinion of the Court of Appeals Is of Import Only to the Parties and Not the Public

This Court has made clear:

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

Layne & Bowler Corp. v. W. Well Works, Inc., 261 U.S. 387, 393 (1923). As in *Lane*, "the present case certainly comes under neither head." *Id*.

In the present case, the action below is between two ex-spouses and a single corporation. Thus, the Ninth Circuit's decision in this case affects not the public but only the parties to the action. Moreover, the Ninth

Circuit decided the case in an unpublished decision[1] opposed to a published opinion. Thus, the decision below cannot be cited as precedential authority. Therefore, the case is of importance only to the parties and cannot generate "a real and embarrassing conflict of opinion and authority between the circuit courts of appeal" because the opinion itself cannot be cited as precedent. *Id*. For this reason alone, this Court should not grant further review.

B. Background on the *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine takes its name from two cases, *Rooker v. Fidelity Trust Co*., 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). It stands for this settled proposition: Under 28 U.S.C. § 1257(a), only this Court has subject matter jurisdiction to review final state court judgments, and therefore lower federal courts lack subject matter jurisdiction to effectively act as reviewing courts of state-court judgments. See, e.g., *Exxon* 544 U.S. 280, 283-288.

In 2005, two decades after it decided *Feldman*, the Court revisited the doctrine in *Exxon*. As the Court explained, "[v]ariously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman*

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[1] The decision is "not precedent except as provided by Ninth Circuit Rule 36-3." Pet. App. 1. Ninth Circuit Rule 36-3 provides that dispositions other than opinions' or orders' designation for publication are not precedential and should not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

cases." *Id.* at 283. Thus, the Court stepped in and clarified "the narrow ground occupied by *Rooker-Feldman*." *Id.* at 284.

The *Rooker* and *Feldman* cases, the Court explained in *Exxon*, "essentially invited federal courts of first instance to review and reverse unfavorable state-court judgments." 544 U.S. at 283. The Court then held that "[t]he Rooker-Feldman doctrine … is confined to cases of the kind from which the doctrine acquired its name: 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." *Id.* at 283-284.

The question, then, is whether the federal action would require, expressly or effectively, lower federal courts to "reject[ ]" or "undo" final state-court judgments. *Id.* at 284, 291-294; see *Feldman*, 460 U.S. at 462 n.16 ("[T]he district court is in essence being called upon to review the state-court decision. This the district court may not do."). *Exxon* noted that a party may bring an "'independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party,'" but only as long as such claim would not invite federal court "review and rejection" of the state-court judgment. *Id.* at 293.

C. The Ninth Circuit's Decision Is Consistent with *Exxon*

Petitioner argues that the Ninth Circuit's decision is inconsistent with *Exxon* because it followed "its own pre-Exxon test from *Kougasian* to determine whether

Lundstrom's claims were barred." Pet. 12. However, this argument lacks merit because the test from *Kougasian* is substantively the same test set forth in *Exxon*. The test from *Kougasian*, as noted by Petitioner, requires that "the federal complaint must [(1)] assert that the plaintiff was injured by 'legal error or errors by the state court' … [and (2)] seek 'relief from the state court judgment' as the remedy." Pet. 12. Similarly, in *Exxon*, the question is whether complained of "injuries [are] caused by [a] state-court judgment [ ]" and invited "district court review and rejection of [that] judgment [ ]." See *Exxon*, 544 U.S. 284. Although the tests use different words, in practice, the tests are the same.

In substance, regardless of the language used, the concept is the same: the *Rooker-Feldman* doctrine only applies when:

(1) The federal court plaintiff lost in state court,

(2) The plaintiff complains of injuries caused by the state court judgment;

(3) The plaintiff invites the district court to review and reject that judgment; and

(4) The state court judgment was rendered before the district court proceedings commenced.

In the present case, *Rooker-Feldman* does not apply because Respondent does not challenge an injury caused by a state-court judgment or request relief from that judgment. Simply stated, this case is not an appeal of a state-court judgment under *Rooker-Feldman*. Although Respondent's claim is related to his

prior state-court litigation because it involves the 401(k) QDRO, he does not complain of legal injury caused by a state-court judgment. Respondent does not assert that the 401(k) QDRO itself caused his injury. In contrast, Respondent asserts that Petitioner caused his injury (i.e., the improper transfer of his 401(k) funds) by obtaining the 401(k) QDRO through a means that deprived Respondent of his due process rights under the Fifth and Fourteenth Amendments. Thus, Respondent does not "complain[ ] of injuries caused by state-court judgments rendered before the district court proceedings commenced" under *Rooker-Feldman*. *Exxon*, 544 U.S. at 284. Therefore, the Ninth Circuit's decision is consistent with *Exxon* because the test from *Kougasian* is in line with this Court's ruling in *Exxon*.

Petitioner further contends that the Ninth Circuit "further departed from this Court's precedent, and its own, by requiring Lundstrom to 'expressly' seek relief from the Texas QDRO." *Id*. Petitioner argues that "[w]hen a state-court loser seeks injunctive relief against the enforcement of the state-court judgment itself or against the party from enjoying the benefits of the state-court judgment, the state-court loser complains of an injury caused by the state-court judgment and invites district court review and rejection of it." Pet. 14. While Respondent's request for injunctive relief may require review of the 401(k) QDRO and even a conclusion it was erroneous, the 401(k) QDRO would not have to be rejected or overruled for Respondent to prevail. Accordingly, the review and rejection requirement of the *Rooker-Feldman* doctrine is not met, and the Ninth Circuit

correctly found that Respondent's Sixth Cause of Action is not barred by the *Rooker-Feldman* doctrine.

In any event, the Ninth Circuit correctly decided in this case that the *Rooker-Feldman* doctrine did not bar Respondent's Sixth Cause of Action against Petitioner. Indeed, the Ninth Circuit's *Rooker-Feldman* decision below is perfectly consistent with the prior decisions of this Court concerning *Rooker-Feldman*, with the Ninth Circuit's own precedents, and with the decisions of other courts of appeals. For these reasons, there is no compelling reason for this Court to exercise certiorari jurisdiction in this case.

D. The Petition Identifies No Conflict in the Circuit Courts that Warrant Review

1. There Is No Conflict Between the Ninth Circuit and the Second, Sixth, and Tenth Circuits

Petitioner asserts that the Ninth Circuit conflicts with the Second, Sixth, and Tenth Circuits when determining whether a litigant is injured by a state-court judgment. Pet. 17. To determine if there is a split among the circuits with respect to this issue, the initial question must be, what does it mean for a plaintiff to be complaining of an injury caused by a state court judgment itself. In *Hoblock v. Albany County Board of Elections*, 422 F.3d 77, 87 (2d Cir. 2005), the Second Circuit posited the following example of a case that would be barred by *Rooker-Feldman* because the state-court judgment itself was the source of the injury:

> Suppose a state court, based purely on state law, terminates a father's parental rights and orders

> the state to take custody of his son. If the father sues in federal court for the return of his son on grounds that the state judgment violates his federal substantive due-process rights as a parent, he is complaining of an injury caused by the state judgment and seeking its reversal.

To the contrary, when the source of the injury is the defendant's actions (and not the state court's judgment), the federal suit is independent, even if it asks the federal court to deny a legal conclusion reached by the state court:

> Suppose a plaintiff sues his employer in state court for violating both state anti-discrimination law and Title VII and loses. If the plaintiff then brings 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 judgment. Instead, he will be alleging *injury based on the employer's discrimination*. The fact that the state court chose not to remedy the injury does not transform the subsequent federal suit on the same matter into an appeal, forbidden by *Rooker-Feldman*, of the state-court judgment.

Id. at 87-88 (emphasis in original).

The critical task is thus to identify those federal suits that profess to complain of injury by a third party, but actually complain of injury "produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it." *Id.* at 88.

In the present case, the cases cited by Petitioner are not inconsistent. Each Circuit recognizes that an independent claim NOT caused by the state court judgment is not barred by the *Rooker-Feldman* doctrine. The language used by the Circuits is slightly different in places, but the meaning is the same. Where the Ninth Circuit says that Lundstrom did not assert an injury caused "by an error or errors by the state court," this meaning still aligns with the other Circuits; the state court judgment was not the cause of the injury. Instead, the source of Respondent's injury was Petitioner's independent conduct in surreptitiously obtaining the orders in violation of the Fifth and Fourteenth Amendments. See e.g., *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 167 (3d Cir. 2010). ["When, however, a federal plaintiff asserts injury caused by the defendant's actions and not by the state-court judgment, *Rooker-Feldman* is not a bar to federal jurisdiction."]

Second Circuit. In *Hoblock v. Albany County Board of Elections*, 422 F.3d 77, 82 (2d Cir. 2005), cited at Pet. 20, the court considered a federal civil rights action challenging a county board's refusal to count absentee ballots after the state court had already ruled which ballots were valid. Relying on the *Exxon* standard, the same standard the Ninth Circuit has repeatedly applied, the court concluded that three of the four requirements to apply *Rooker-Feldman* were met, but it remanded the case to the district court to determine if "the parties in the state and federal suits" were "the same." *Id*. at 89, 92.

In its analysis, *Hoblock* explained that the "key" or "core" substantive requirement for the analysis is that federal suits are barred by *Rooker-Feldman* only when plaintiffs "complain of an injury caused by a state judgment." *Id.* at 87. That focus on whether the injury is caused by the state-court judgment is fully consistent with Ninth Circuit precedent. See, e.g., *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007). The doctrine applies when the federal plaintiff's claim arises from the state court judgment, not simply when a party fails to obtain relief in state court.

Moreover, *Hoblock* underscored the focus on the substance, not form, of the plaintiff's claim. "Just presenting in federal court a legal theory not raised in state court," *Hoblock* explained, "cannot insulate a federal plaintiff's suit from *Rooker-Feldman* if the federal suit nonetheless complains of injury from a state-court judgment and seeks to have that state court judgment reversed." 422 F.3d at 86. "Feldman itself makes this plain." *Id.* This same focus aligns closely with Ninth Circuit precedent.

Sixth Circuit. In *Fieger v. Ferry*, 471 F.3d 637, 643 (6th Cir. 2006), cited at Pet. 19, the court determined that "the source of the injury must be from the state court judgment itself; a claim alleging another source of injury is an independent claim." *McCormick v. Braverman*, 451 F.3d 382, 386-388 (6th Cir. 2006), cited at Pet. 19, illustrates a case in which the court found that certain claims were barred by *Rooker-Feldman* and others were not. The court concluded that a federal action alleging fraud by certain parties to state-court proceedings were independent of the state-court

judgment, but that other claims were not because they alleged that the state-court order was illegal. *Id*. at 392-393, 395. In making this distinction, the court stated, consistent with Ninth Circuit precedent, that the "key point" is whether the state-court decision was the "source of the injury." *Id*. at 393-394.

Similar to the instant case, in *McCormick*, the plaintiff asserted independent claims that the "state court judgment were procured by certain Defendants through fraud, misrepresentation, or other improper means …." *Id*. at 392. Even though the injuries of which the plaintiff complained helped cause the adverse state judgments, those claims were "independent" because they stemmed from "some other source of injury, such as a third party's actions." *Id*. at 392. In the Sixth Circuit, just like the Ninth Circuit, when a federal plaintiff asserts injury caused by the defendant's actions and not by the state-court judgment, *Rooker-Feldman* does not apply. See *Coles v. Granville*, 448 F.3d 853, 859 (6th Cir. 2006).

Tenth Circuit. In *Mo's Express LLC v. Sopkin*, 441 F.3d 1229, 1237 (10th Cir. 2006), cited at Pet. 20, the court recognized that it must pay close attention to the relief sought, and when the relief sought by the plaintiffs would not reverse or "undo" the state-court judgment, *Rooker-Feldman* does not apply. This too is consistent with Ninth Circuit precedent.

2. There Is No Conflict Between the Ninth Circuit and the Third, Seventh, Eighth, Tenth, and Eleventh Circuits

Petitioner further argues the Ninth Circuit conflicts with the Third, Seventh, Eighth, and Eleventh Circuits when determining whether the relief requested is inextricably intertwined with the validity of the state-court judgment. Pet. 23. However, it remains questionable whether the "inextricably intertwined" test is relevant post-*Exxon*. In *Exxon*, the phrase 'inextricably intertwined' appears only three times, twice in the Court's description of *Feldman* and once in the Court's discussion of the lower court's decision. 544 U.S. at 286 & n.1, 291. The Court deliberately did not rely on this formulation in its jurisdictional analysis, instead employing the four-part inquiry outlined above. "Although the term 'inextricably intertwined' was used twice by the Supreme Court in *Feldman*, reliance on this term has caused lower federal courts to apply *Rooker-Feldman* too broadly." *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 169-170 (3d Cir. 2010). "The phrase "inextricably intertwined" does not create an additional legal test or expand the scope of *Rooker-Feldman* beyond challenges to state-court judgments." *Id.*

Furthermore, if any such split exists, it has no relevance to the case at hand because the Ninth Circuit did not conduct any analysis of whether the relief requested is inextricably intertwined with the validity of the state-court judgment. Pet. App. 1-6. Thus, this case is not an appropriate vehicle to decide any issues regarding the "inextricably intertwined" analysis under

Rooker-Feldman. Moreover, although some of the circuits cited by Petitioner have treated the "inextricably intertwined" language differently, there is no true conflict among the circuits with respect to the inextricably intertwined analysis.

Third Circuit. The Third Circuit has ruled that the phrase "inextricably intertwined" does not create an additional legal test. The court recognized that "caution is now appropriate in relying on our pre-Exxon formulation of the *Rooker-Feldman* doctrine," which focused on whether the state and federal suits were "inextricably intertwined.*"Gary v. Braddock Cemetery*, 517 F.3d 195, 200 n.5 (3d Cir. 2008). "When a federal plaintiff brings a claim, whether or not raised in state court, that asserts injury caused by a state-court judgment and seeks review and reversal of that judgment, the federal claim is 'inextricably intertwined' with the state judgment." *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 170 (3d Cir. 2010). "The phrase 'inextricably intertwined,' however, 'has no independent content. It is simply a descriptive label attached to claims that meet the requirements outlined in Exxon Mobil.'" *Id*.

Seventh Circuit. In *Tryer v. City of South Beloit, Illinois*, 456 F.3d 744, 744 (7th Cir. 2006), cited at Pet. 24, Petitioner contends the Seventh Circuit held that "claims are inextricably intertwined when the district court must review the elements of the claim and if those elements were satisfied in the state court. However, in *Tryer*, the court did not focus on *Rooker-Feldman* and instead focused on other aspects of abstention.

In *Brown v. Bowman*, 668 F.3d 437, 442 (7th Cir. 2012), cited at Pet. 24, the Seventh Circuit described when the "inextricably intertwined" analysis comes in play, stating, "[t]he determination of whether a federal claim is 'inextricably intertwined' hinges on whether it alleges that the supposed injury was caused by the state court judgment, or, alternatively, whether the federal claim alleges an independent prior injury that the state court failed to remedy." *Id*. The court in Brown further noted that "finding that a federal claim is inextricably intertwined with a state court judgment does not end the inquiry. Once it is determined that a claim is inextricably intertwined, we must then inquire whether 'the plaintiff [did or] did not have a reasonable opportunity to raise the issue in state court proceedings.'" (citing to *Brokaw*, 305 F.3d at 667 (citing *Long*, 182 F.3d at 558). *Id*.

In *Sykes v. Cook County Circuit Court Probate Division*, 837 F.3d 736, 742 (7th Cir. 2016), cited at Pet. 25, the Seventh Circuit noted that "[t]he doctrine occupies 'narrow ground'" and is "confined to the cases of the kind from which the doctrine acquired its name: cases brought by state-court losers ... inviting district court review and rejection of [those state court's] judgments." *Id*. at 284. In order for the doctrine to apply, the state court judgment must be "inextricably intertwined" with the federal court lawsuit. In other words, there must be no way for the injury complained of by a plaintiff to be separated from a state court judgment. *Id*.

In *Milchtein v. Chisholm*, 880 F.3d 895, 898 (7th Cir. 2018), cited at Pet. 25, the Seventh Circuit appears

to limit the use of the "inextricably intertwined" analysis as a jurisdictional bar under *Rooker-Feldman*. The court states that "[b]ecause the phrase 'inextricably intertwined' has the potential to blur this boundary, it should not be used as a ground of decision." *Id.* The Seventh Circuit further states that the "vital question, the Justices stated in *Exxon Mobil*, *Lance*, and *Skinner*, is whether the federal plaintiff seeks the alteration of a state court's judgment. The Milchteins do not, so the *Rooker-Feldman* doctrine does not block this suit." *Id.* Thus, the core inquiry is whether the plaintiff seeks the alteration of a state court's judgment.

Eighth Circuit. In *Robins v. Ritchie*, 631 F.3d 919, 925 (8th Cir. 2011), cited at Pet. 26, the court states that "[o]ne way to determine whether a federal claim is based on a complaint of injury caused by a state-court judgment, and thus an appeal of such judgment, is to determine if the state and federal claims are "inextricably intertwined." *Id.* According to the Eighth Circuit, "[f]ederal claims are inextricably intertwined with state-court claims if the federal claims can succeed only to the extent the state court wrongly decided the issues before it." *Id.*

Eleventh Circuit. In *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009), cited at Pet. 26, the district court found that the plaintiff's claim was "inextricably intertwined" with the Georgia judgment because that claim was based on his belief that the state court's ruling was wrong, and it essentially asked the district court to "review and reverse the Georgia court." *Id.*

The cases on which Petitioner relies show that the courts of appeals have carefully considered *Rooker-Feldman*'s application post-*Exxon* in a variety of different settings. Each of the circuits, including the Ninth Circuit, applies the standard set forth in *Exxon*. Not one of Petitioner's cases refers to any split of authority in applying *Exxon* – let alone that the Ninth Circuit is at odds with any other courts of appeals.

Ultimately, even though the courts may phrase their analysis in slightly different ways, two core, consistent principles emerge from this case law, drawing directly from *Exxon*. First, courts look to whether the state-court judgment is the "source" of the injury asserted in federal court. See, e.g., *Great W. Mining & Mineral*, 615 F.3d at 166-167 ("The second requirement--that a plaintiff must be complaining of injuries caused by a state-court judgment--may also be thought of as an inquiry into the source of the plaintiff's injury."). As discussed above, Ninth Circuit precedent does the same. Second, courts ask if the relief sought in federal court would result in it "rejecting" or "undoing" the state-court judgment. See, e.g., *Bolden v. City of Topeka*, 441 F.3d 1129, 1140 (10th Cir. 2006) (court asks if federal suit would "upset" the state-court judgment). Again, the Ninth Circuit does the same.

E. Petitioner's Inextricably Intertwined Argument Lacks Merit

Petitioner argues that the Ninth Circuit contradicted *Feldman* because it "did not even attempt to determine whether the injunctive relief was inextricably intertwined with the validity of the Texas

QDRO, which Lundstrom was barred from disputing." However, the "inextricably intertwined" test is only applied if the Court has already determined that *Rooker-Feldman* applies because plaintiff is seeking a prohibited de facto appeal. Thus, the "inextricably intertwined" analysis only "allows courts to dismiss claims closely related to claims that are themselves barred under *Rooker-Feldman*." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1142 (9th Cir. 2004). Here, as noted by the Ninth Circuit, Respondent's Sixth Cause of Action does not assert a legal error by a state court. Therefore, Respondent is not bringing a de facto appeal under *Rooker-Feldman*, and the "inextricably intertwined" analysis is inapplicable.

IV. CONCLUSION

In summation, the Court should not issue a writ of certiorari to review the Ninth Circuit's unpublished decision in this case because it presents no important issue for this Court's consideration. Indeed, Petitioner has identified no conflict between the Ninth Circuit's *Rooker-Feldman* holding in this case and any decision of a court of appeals. Further, the Ninth Circuit has already denied without any delay Petitioner's request for a re-hearing or re-hearing en-banc. For these reasons, Petitioner has failed to demonstrate that there are compelling reasons warranting this Honorable Court to accept appellate jurisdiction of this case and devote its time and energies to this appeal.

Respectfully submitted,

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