ORIGINAL

No. 22-725

In the

Supreme Court of the United States

Peter Kleidman,

Petitioner,

v.

Hon. Thomas L. Willhite, Jr., et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Kleidman requests that this petition be liberally construed. *Erickson v. Pardus*, 551 US 89, 94 (2007).

This petition pertains to the *Rooker-Feldman* doctrine, named after *Rooker v. Fidelity Trust Co.*, 263 US 413 (1923) (*Rooker*)[1] and *DC Ct. of Appeals v. Feldman*, 460 US 462 (1983). The gist of *Rooker-Feldman* is that one cannot appeal a state-court decision by way of an original action in federal district court. The Courts of Appeals have cited *Rooker-Feldman* thousands of times, and yet there is currently substantial disarray, including inter- and intra-Circuit conflict on numerous aspects of *Rooker-Feldman*, along with disagreements among circuit judges as expressed in numerous dissenting and/or concurring opinions.

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 US 280 (2005) made two rulings that will be used in these Questions. First,

> *Rooker-Feldman* ... is confined to cases ... brought by state-court losers complaining of injuries caused by state-court judgments....

Id., 284. Second, in a federal-question action (such as here),

> "*Rooker-Feldman* ... merely recognizes that 28 USC § 1331 is a grant of original jurisdiction, ... not ... appellate jurisdiction over state-court judgments."

Exxon, 292.

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[1] This method of abbreviating cases (e.g., "*Rooker*") is used throughout without further mention.

Question 1. Is there sufficient overall disarray in post-*Exxon* *Rooker-Feldman* jurisprudence, including inter- and intra-Circuit conflicts and disharmony, and disagreements among Circuit judges as expressed in dissenting and/or concurring opinions, to warrant this Court's attention to clarify the scope and contours of *Rooker-Feldman*?

Background to Questions 2a, 2b, 2c.

To invoke federal jurisdiction, a federal plaintiff must plead injury in fact, i.e., "suffer[ring] the 'invasion of a legally protected interest.'" *Gill v. Whitford*, 138 S.Ct. 1916, 1920 (2018).

Question 2a. When a federal plaintiff alleges merely an "injur[y] caused by [a] ... judgment[]" (in the sense of *Exxon*, 284), does the plaintiff therefore fail to plead injury in fact (since one has no legally-protected interest in having a favorable decision)?

Question 2b. Is *Rooker-Feldman* subsumed under injury-in-fact jurisprudence, and therefore superfluous?

Question 2c. Should this Court formally abolish *Rooker-Feldman* altogether (since resolution of the injury-in-fact inquiry necessarily resolves the *Rooker-Feldman* inquiry)?

Background to Questions 3a-3f.

In *Feldman*, Feldman's petition to the State Court[2] was denied. In the federal case, Feldman's fifth cause of action ("Feldman's Count 5") alleged that the State Court unconstitutionally discriminated against him by refusing to consider his

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[2] See 28 USC § 1257(b).

qualifications set forth in his petition (whereas it had presumably considered the qualifications of other, similarly-situated persons). *Feldman*, 469, n. 3. *Feldman* barred Feldman's Count 5 because it sought impermissible appellate review of the State-Court decision. *Id.*, 486-487.

Question 3a. Did *Feldman* wrongly decide Feldman's Count 5?

Question 3b. In Feldman's Count 5, was Feldman's alleged injury caused by the State-Court decision, or was Feldman's alleged injury the denial of his constitutional rights, caused by the State Court's discriminatory refusal to consider Feldman's qualifications?

Question 3c. If the injury alleged in Feldman's Count 5 was the unconstitutional, discriminatory refusal to consider Feldman's qualifications (not the State-Court decision), was *Feldman*'s treatment of Feldman's Count 5 erroneous in light of *Exxon*?

Question 3d. Did *Feldman*'s discussion of Feldman's Count 5 *misstate* Feldman's Count 5 by asserting, "[Feldman] alleg[ed] that the [State Court] ... acted ... discriminatorily *in denying [Feldman's] petition[],*" when in actuality Feldman alleged that the State Court acted discriminatorily *in refusing to consider his qualifications.*? Compare *Feldman*, 486-487 (emphasis added), with *Id.*, 469, n. 3 (emphasis added).

Question 3e. Did *Exxon* ever discuss Feldman's Count 5?

Question 3f. Should this Court partially overturn *Feldman* for erroneously barring Feldman's Count 5?

Background to Questions 4a, 4b.

Federal district courts, while exercising original jurisdiction, can reopen federal-district-court judgments under Rules 60(b)(4), 60(b)(6) to accomplish justice and redress violations of due process rights. *Liljeberg v. Health Servs. Acq. Corp.*, 486 US 847, 863-864 (1988); *Grun v. Pneumo Abex Corp.*, 163 F.3d 411, 423-424 (7th Cir. 1998).

Question 4a. Since federal district courts, while exercising original jurisdiction under Rule 60(b), can reopen federal-district-court judgments to accomplish justice and secure due process rights, does it follow that federal district courts likewise have original jurisdiction to reopen s*tate-court* judgments to accomplish justice and secure due process rights?

Question 4b If the answer to the foregoing is, "No," then what is the jurisdictional impediment that bars federal district courts from reopening state-court judgments, while allowing them to reopen federal-district-court judgments?

Background to Questions 5a, 5b.

Some Circuit decisions hold that *Rooker-Feldman* does not bar a federal plaintiff's challenge to a state-court decision when the plaintiff alleges he/she was denied due process in the state-court proceedings This purported exception to *Rooker-Feldman* is sometimes referred to as the 'due process exception' to *Rooker-Feldman.* There is inter- and intra-Circuit split on this issue. It has been called a "jurisprudential thicket," *Efreom v. McKee*, 46 F.4th 9, 19, n. 11 (1st Cir. 2022), and Wright & Miller asserted this issue "creates genuine trouble"

for *Rooker-Feldman*. 18B Wright, Miller & Cooper, *Fed. Prac. & Proc.*, § 4469.3, 169-170 (3rd ed. 2019, Apr. 2022 update).

Question 5a. Is there a due-process exception to *Rooker-Feldman*?

Question 5b. Does *Rooker-Feldman* apply when the federal plaintiff challenges only the *manner* in which the state-court decision was adjudicated, not the *merits* of the state-court decision?

Background to Question 6.

In the context of full-faith-and-credit jurisprudence (US Const. Art. IV, § 1; 28 USC § 1738), a federal district court is empowered to determine the preclusive effect of a state-court judgment; in particular, it is empowered to determine that a state-court judgment is devoid of preclusive effect for being constitutionally infirm, i.e., obtained in violation of due process. *Griffin v. Griffin*, 327 US 220, 228-229 (1946); *Kremer v. Chem. Constr. Corp.*, 456 US 461, 482 (1982).

Question 6. Since federal district courts, while exercising original jurisdiction, can declare constitutionally infirm state-court judgments devoid of preclusive effect under full-faith-and-credit jurisprudence, can they likewise declare such state-court judgments void without being barred by *Rooker-Feldman* (i.e., without exerting appellate jurisdiction over the state-court judgment)?

Background to Question 7

Some Circuit decisions hold that *Rooker-Feldman* does not bar a federal plaintiff's challenge to a state-court judgment when he/she

had no reasonable opportunity to bring that challenge in the state-court proceedings. Other Circuit decisions hold to the contrary, so there is split authority.

Question 7. Does *Rooker-Feldman* bar a federal plaintiff's challenge to a state-court judgment when he/she had no reasonable opportunity to bring that challenge in the state-court proceedings?

Background to Questions 8a-c,.

Feldman held that a federal plaintiff's claim is barred when "inextricably intertwined" with the state-court decision. *Feldman*, 486. The Circuits are split on whether, post-*Exxon*, the inextricably intertwined test is still viable. There are even intra-Circuit splits, and Circuit splits on what "inextricably intertwined" even means.

Question 8a. Is the "inextricably intertwined" test still a legitimate test to determine whether *Rooker-Feldman* applies?

Question 8b. Did *Exxon* eliminate the "inextricably intertwined" test?

Question 8c. What are the legal standards and criteria to ascertain whether a federal plaintiff's claim is *inextricably*, as opposed to *extricably*, intertwined with a state-court judgment?

PARTIES TO THE PROCEEDING

Hon. Thomas L. Willhite, Jr., Hon Audrey B. Collins, Associate Justices of the California Court of Appeal for the Second Appellate District

STATEMENT OF RELATED PROCEEDINGS

Kleidman v. RFF Family Partnership, LP, Superior Court of California, County of Los Angeles, No. SC121303, possible[3] judgment as to RFF Family Partnership, LP ("RFF") filed June 13, 2014; interlocutory amended judgment as to RFF filed August 20, 2015; order for attorney fees filed September 19, 2019.

Kleidman v. RFF Family Partnership, LP, California Court of Appeal, Second Appellate District, Division Four, No. B302449, opinion filed April 14, 2022.

Kleidman v. RFF Family Partnership, LP, Supreme Court of California, No. S274740, Petition for Review summarily denied July 13, 2022.

Kleidman v. RFF Family Partnership, LP, Supreme Court of the United States, No. 22-557, Petition for Certiorari filed December 11, 2022.

Kleidman v. RFF Family Partnership, LP, California Court of Appeal, Second Appellate District, Division P, No. B260735, order of dismissal filed February, 25, 2015; motion to reinstate appeal denied March 27, 2015.

Kleidman v. RFF Family Partnership, LP, Supreme Court of California, No. S225536, petition summarily denied May 13, 2015.

Kleidman v. Cal. Court of Appeal, Second Appellate District, Supreme Court of California, No. S236562, petition summarily denied August 31, 2016.

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[3] This judgment is ambiguous.

Kleidman v. RFF Family Partnership, LP, California Court of Appeal, Second Appellate District, No. B268541, opinion filed Jul. 10, 2018.

Kleidman v. RFF Family Partnership, LP, Supreme Court of California, No. S250726, petition summarily denied Sep. 26, 2018.

Kleidman v. Hon. Willhite, et al., No. 2:20-cv-02365-PSG-JDE (C.D. Cal.), judgment entered September 29, 2020; motion for reconsideration denied October 29, 2020.

Kleidman v. Cal. Court of Appeal for the Second Appellate Dist., et al., No. 20-56256 (9th Cir.), opinion filed April 19, 2022; petition for rehearing denied August 31, 2022.

Kleidman v. Hon. Collins, et al., No. 2:22-cv-03263-CJC-JDE (C.D. Cal.), amended judgment entered January 9, 2023.

Kleidman v. Division P, et al., Superior Court of California, County of Los Angeles, No. 19 SMCV 01039, voluntary dismissal as to RFF filed Dec. 10, 2019, judgments entered April 24, 2020, August 24, 2020, March 3, 2021.

Kleidman v. Cal. Court of Appeal, Second Appellate Dist., et al., California Court of Appeal, Fourth Appellate District, Division One, No. D079855, pending.

Kleidman v. Cal. Court of Appeal, Second Appellate Dist., et al., California Court of Appeal, Fourth Appellate District, Division One, No. D079856, pending.

Kleidman v. Division P, et al., California Court of Appeal, Fourth Appellate District, Division One, No. D079855, pending.

Kleidman v. RFF Family Partnership, LP, No. 2:22-cv-03947-SPG-AFM (C.D. Cal.), dismissed..

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Kleidman v. Cal. Court of Appeal, etc., No. 20-56256, 2022 WL 1153932 (9th Cir. Apr. 19, 2022). App.1-2.

Kleidman v. Willhite, No. 2:20-cv-02365-PSG-JDE, 2020 WL 5823278 (C.D.Cal. Aug. 20, 2020). App.4-30.

JURISDICTION

This Court has jurisdiction under 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution., Article IV, § 1:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

US Constitution., 1st Amend.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

US Constitution., 14th Amend., § 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.

28 USC § 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 USC § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC § 1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its

Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Federal Rule of Civil Procedure 60(b)

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

STATEMENT OF THE CASE

A. Introduction

This petition concerns *Rooker-Feldman.* In a federal-question action (like this one), *Rooker-Feldman* " 'merely recognizes that 28 USC § 1331 is a grant of original ..., ... not ... appellate

jurisdiction over state-court judgments.'" *Exxon*, 292. When a federal plaintiff's allegations involve a state-court case, the question arises as to whether the plaintiff is impermissibly asking the district court to exert appellate jurisdiction thereover.

Rooker-Feldman is highly pervasive because state-court litigants often feel aggrieved by what happens to them in state court, and therefore come to federal court (typically under 42 USC § 1983, 28 USC § 1331, or 28 USC § 1332) to redress those grievances.

Rooker-Feldman is both pervasive and in disarray, replete with inter- and intra-Circuit conflicts, and disagreements among circuit judges as expressed in numerous dissenting and concurring opinions. For instance, one decision complained that "the caselaw concerning this topic is a jumble," referring to one sub-topic within *Rooker-Feldman* jurisprudence. *Veasley v. Fed. Nat'l Mortg. Assoc.*, 623 F.App'x 290, 294 (6th Cir. 2015). The Courts of Appeals have cited *Rooker-Feldman* thousands of times,[1] and still can't get their stories straight. This Court's intervention is sorely needed to restore order.

A simple example illustrates why the afore-mentioned original-appellate distinction is often unclear to Circuit judges. Suppose in the state-court case *P v. D* there is conflicting testimony on a dispositive, factual issue in a bench trial. The judge ("J") rules against P. Suppose P later overhears J's clerk saying that he/she saw J decide

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[1] According to a Westlaw search, over 2,425 Courts of Appeals cases mentioned "*Rooker-Feldman*" since *Exxon*, decided in 2005. See also R. Graybill, Comment, *The Rook That Would Be King*, 32 Yale J. Reg. 591, 596-601 (2015).

P v. D by a coin-flip. P then sues J (*P v. J*) in federal district court for violation of P's due process rights, and prays that *P v. D*'s judgment be reopened so that a fair trial may be had. Is *P v. J* barred by *Rooker-Feldman* as an impermissible appeal of *P v D*? Or is there a "due process exception" to *Rooker-Feldman*? App.34-35, 49, 51.

The Circuits are split here. The First Circuit recently called this area within *Rooker-Feldman* a "jurisprudential thicket," *Efreom v. McKee*, 46 F.4th 9, 19, n. 11 (1st Cir. 2022), and Wright & Miller said this issue "creates genuine trouble" for *Rooker-Feldman*. 18B Wright, Miller & Cooper, *Fed. Prac. & Proc.*, § 4469.3, 169-170 (3rd ed. 2019, Apr. 2022 update).

The instant action, *Kleidman v. Willhite*, is postured similarly to *P v. J* in that Kleidman alleges that Respondents (state-court appellate Justices) violated Kleidman's due process rights in the course of adjudicating Kleidman's state-court appeal, and prays that the appeal be reopened so that a fair trial may be had.

According to the Ninth Circuit's decision under consideration herein ("Ninth Circuit's Decision"), App.1-2, *P v. J* is barred by *Rooker-Feldman* as an impermissible "de-facto" appeal. It holds that *Rooker-Feldman* bars federal actions when:

—the federal plaintiff "'complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court;'" or

—the federal "court 'cannot grant the relief [the federal plaintiff] seeks without "undoing" the decision of the state court.'"

App.1-2. *P v. J* satisfies both criteria: P accuses J of a legal wrong (deciding by coin-flip) and seeks relief from, and to undo, *P v. D*'s judgment.

Similarly-postured decisions in other Circuits support the Ninth Circuit Decision that *P v. J* is barred by *Rooker-Feldman*. However, decisions in other Circuits support the contrary conclusion that *P v. J* legitimately invokes the federal district court's original jurisdiction, unbarred by *Rooker-Feldman*. There is even intra-Circuit split on this issue. *infra*, 19-23.

This Court's Justices have characterized *Rooker-Feldman* as "complex," *Perdue v. Kenny A. ex rel. Winn*, 559 US 542, 567 (2010) (Breyer, J, joined by Stevens, Ginsburg, Sotomayor, JJ, concurring and dissenting), and "difficult," *Pennzoil Co. v. Texaco Inc.*, 481 US 1, 25 (1987) (plur.) (Marshall, J., concurring), and have not always seen eye-to-eye on *Rooker-Feldman*. Compare *Id.*, 24-26 (Marshall, J., concurring), with *Id.*, 18, 21, 28, 31, & n. 3 (Scalia, J., joined by O'Connor J, concurring; Brennan, J, concurring, Blackmun, J concurring, Stevens, J, concurring); *Feldman*, 488-490 (*Stevens*, J, dissenting); compare *Johnson v. De Grandy*, 512 US 997, 1005-1007 (1994) (*Rooker-Feldman* is an abstention doctrine) with *Exxon*, 292 (distinguishing *Rooker-Feldman* from abstention).

In 2005, this Court "granted certiorari ... to resolve conflict among the Courts of Appeals over the scope of ... *Rooker-Feldman*." *Exxon*, 544. This Court observed that *Rooker-Feldman* jurisprudence had "extend[ed] far beyond" its namesake cases, and sought to "confine[]" it thereto. *Exxon*, 283-284.

> *Rooker-Feldman* ... 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, 284

Although *Exxon* helped 'confine' *Rooker-Feldman*, much is left unresolved. Indeed, one scholar presciently questioned whether *Exxon* helped enough. McLemore, Comment, *The Rooker-Feldman Doctrine: Did* Exxon *Rein in the Doctrine or Leave Lower Federal Courts with as Little Guidance as Before?*, 31 Okla. City U.L. Rev. 361, 376-377 (2006). In the recent words of two Chief Circuit Judges:

> *Rooker-Feldman* is back to its old tricks.... In our circuit alone, ... [by my count, at least 80] ... post-*Exxon* ... cases tangl[ed] with [*Rooker-Feldman*]. [¶] We are not alone. *Rooker-Feldman* continues to wreak havoc across the country. [collecting cases] [¶] Here's to urging the Court to give one last requiem to *Rooker-Feldman*. [¶] *Rooker-Feldman* harasses litigants and courts to this day. ... One empirical analysis suggests [*Rooker-Feldman*] proliferated *even more* after *Exxon*['s] ...attempt to limit it.[2] ... *Exxon* ... potentially left room for debate over the meaning of ... "complaining of injuries caused by state-court judgments." [*Exxon*, 284.] The clause could ... possib[ly] transform[] *Rooker-Feldman* into a difficult-to-pin down inquiry.

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[2]Graybill, *supra*, 32 Yale J. Reg., at 596-601.

VanderKodde v. Mary Jane M. Elliott, PC, 951 F.3d 397, 405–409 (6th Cir. 2020) (Sutton, CJ, concurring) (footnote added).

> [*Rooker–Feldman*] continues to be applied outside its carefully circumscribed boundaries" [¶¶] [There are] lingering misconceptions about *Rooker–Feldman*....

Andrade v. City of Hammond, In., 9 F.4th 947, 951, 954 (7th Cir. 2021) (Sykes, CJ, concurring).

The Tenth Circuit complained:

> Though [*Exxon*] restore[d] [*Rooker–Feldman*] to its original boundaries, courts have continued to apply *Rooker–Feldman* as a one–size–fits–all preclusion doctrine for a vast array of claims relating to state court litigation.

Behr v. Campbell, 8 F.4th 1206, 1208 (11th Cir. 2021).

What's more, Circuit Courts struggled with *Exxon*'s formulation of *Rooker–Feldman*.

> *Exxon* ... scarcely elaborates on what [its requirements] might mean. ... [¶¶] Precisely what this means is not clear from ... *Exxon*.

Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 85–86, 97 (2nd Cir. 2005).

> *Exxon* ... offers conflicting guidance. ... [*Exxon*'s] holding that *Rooker–Feldman* "is confined to cases of the kind from which the doctrine acquired its name," ... invites disagreement about the scope of *Rooker* and *Feldman*.

Malhan v. Sec'y US Dept. of State, 938 F.3d 453, 459 (3rd Cir. 2019).

> [*Exxon*'s] gloss on *Rooker–Feldman* has since generated uncertainty in this Circuit....

Miller v. Dunn, 35 F.4th 1007, 1011 (5th Cir. 2022).

> [*Exxon*] has [not] clarified when, for *Rooker–Feldman* purposes, a state court renders judgment.

Robins v. Ritchie, 631 F. 3d 919, 926–927 (8th Cir. 2011).

> *Exxon* ... provides little direction concerning when state proceedings end.

Nicholson v. Shafe, 558 F.3d 1266, 1275 (11th Cir. 2009).

> Usually *Rooker–Feldman* cases are complicated because it's difficult to determine if a plaintiff seeks review of a state-court decision.

RLR Invs., LLC v. City of Pigeon Forge, Tn., 4 F.4th 380, 387–388 (6th Cir 2021).

Post–*Exxon* inter- and intra–Circuits conflicts and disharmony are discussed extensively herein. The *Rooker–Feldman* cases cited herein are exclusively post–*Exxon*, save one. This petition cites dissenting and/or concurring opinions to show disagreements among Circuit judges regarding *Rooker–Feldman*. This petition also cites numerous unpublished decisions, not for their persuasive value, but so this Court can appreciate what is happening in the trenches in the appellate-court battlefields. Important federal questions should not evade this Court's attention merely because they are buried in the netherworld of unpublished decisions. After all, most of us litigants are stuck therein.

While *Exxon* provided some much–needed guidance, this Court should "once more put [its]

shoulder to the wheel ... to be of greater assistance to courts confronting [*Rooker–Feldman*] ... than it appears [this Court has] been in the past" *Parratt v. Taylor*, 451 US 527, 533–534 (1981).

B. Facts

Kleidman sued RFF Family Partnership, LP ("RFF") in California Superior Court. (*Kleidman v. RFF*). App.5. In 2015, Kleidman suffered certain adverse rulings, which he appealed, thereby giving rise to Appeal No. B268541 in the California Court of Appeal ("B268541"). Justices Willhite and Collins (Respondents) presided over B268541. Respondents affirmed. App.6, 38.

Kleidman then sued Respondents in federal district court, alleging Respondents violated Kleidman's due process rights in the course of adjudicating B268541. *Kleidman v. Willhite*, No. 2:20–cv–02365–SPG–JDE. App.4–7. The operative Second Amended Complaint alleged that Respondents:

—made arguments *sua sponte* in their final decision without affording Kleidman the opportunity to be heard thereon. App.6, 39;[3]

—ignored numerous arguments that Kleidman advanced on appeal. App.39–41.[4]

Kleidman prayed for:

—an injunction commanding that B268541 be reopened and continue 'in a manner which preserves [Kleidman's] Constitutional right to

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[3] "denying him an opportunity ... to rebut new arguments." App.6.

[4] The RR omits this allegation. If certiorari is granted, this Court can confirm that Kleidman indeed made the allegations in App.39–41.

due process, App.7, 41;

—declarations that the B268541 decision was void and "that [Respondents], in the manner and course of adjudicating B268541, violated the US Constitution's due process clause." App.7–8, 41.

The foregoing allegations and prayers shall herein be designated Kleidman's "Due Process Claim."[5]

The Magistrate Judge's Report & Recommendation held that *Rooker–Feldman* barred Kleidman's Due Process Claim. App.11–18. It was adopted and the Due Process Claim was dismissed. App.31.

Kleidman appealed, giving rise to appeal *Kleidman v. Cal. Court of Appeal, etc.*, No. 20–56256 in the Ninth Circuit. The Ninth Circuit's Decision agreed that *Rooker–Feldman* barred Kleidman's Due Process Claim. App.1–2. Kleidman's petitions rehearing were denied. App.3.

REASONS FOR GRANTING THIS PETITION

I. Although *Exxon* purportedly 'confined' *Rooker–Feldman*, pervasive disarray persists, including uncertainties, inter- and intra–Circuit conflicts, and disagreements among Circuit judges; this Court should restore order

Rooker–Feldman analysis involves determining whether allegations impermissibly attempt to invoke appellate, vis–à–vis original, jurisdiction in a federal district court. This Court addressed this

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[5] Kleidman made other claims against Respondents which may have been shrill and non–justiciable, App.6, but this extraneous matter should not impair this core Due Process Claim. *Athens Newspapers, Inc. v. Jefferson Standard Life Ins. Co*,, 729 F. 2d 1412, 1417 (.11th Cir. 1984).

"somewhat nice" original-appellate distinction in some early cases. *Barrow v. Hunton*, 99 US 80, 83 (1879); *Johnson v. Waters*, 111 US 640, 667-672 (1884).

Although *Exxon* purportedly 'confined' *Rooker-Feldman*, there remains extensive uncertainty, inter- and intra-Circuit conflicts and tension, and disagreements among Circuit judges.

Post *Exxon*, there are numerous references to inter-Circuit conflicts. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 428, n. 2 (2nd Cir. 2014); *Hutchings v. Cnty. of Llano, Tx.*, 2022 U.S.App. LEXIS 24328 *2-*3 (5th Cir. Aug. 29, 2022); *Houston v. Queen*, 606 F.App'x 725, 731 (5th Cir. 2015); *Truong v. Bank of Am., NA*, 717 F.3d 377, 383-384 (5th Cir. 2013); *Kreit v. Quinn (Matter of Cleveland, etc.)*, 690 F.App'x 283, 286 (5th Cir. 2017); *RLR*, 391-392 & n. 6; *Allen v. IRMCO Mgmt. Co.*, 420 F.App'x 597, 599 (7th Cir. 2011); *Harold v. Steel*, 773 F.3d 884, 886 (7th Cir. 2014); *Iqbal v. Patel*, 780 F.3d 728, 729 (7th Cir. 2015); *Edwards v. City of Jonesboro*, 645 F.3d 1014, 1017-1018 (8th Cir. 2011); *Dodson v. Univ. of Ar., etc.*, 601 F.3d 750, 759-760 & n. 8 (8th Cir. 2010) (Melloy, J., concurring); *Bradshaw v. Gatterman*, 658 F.App'x 350, 362 (10th Cir. 2016); *Farris v. Burton*, 686 F.App'x 590, 593 (10th Cir. 2017); *Richardson v. Title IV-D Agcy.*, 842 F.App'x 190, 193 (10th Cir. 2021); *Casale v. Tillman*, 558 F.3d 1258, 1261 (11th Cir. 2009); also compare *Reusser v. Wachovia Bank, NA*, 525 F.3d 855, 859 (9th Cir. 2008) (*Rooker-Feldman* may apply even when "parties do not directly contest the merits of a state court decision") with *Lámar v. Ebert*, 681 F.App'x 279, 287 (4th Cir. 2017) ("'controlling question'" is whether federal plaintiff requests

"federal district court to ... pass upon ... merits of ... state[-]court decision'"); and compare *In re Amer. Bridge Products, Inc.*, 599 F.3d 1, 4 (1st Cir. 2010) (*Rooker-Feldman* inapplicable since there is "no prior [state-court] judgment ... on ... claims [federal plaintiff] now pursues"), with *Hoblock v. Albany Cnty. Bd. of Elec.*, 422 F.3d 77, 87 (2nd Cir.2005) (*Rooker-Feldman* may bar federal suit which "proceeds on ... theories not addressed in state court").

Post *Exxon*, there are numerous references to intra-Circuit conflicts. *Malhan*, 458-459; *Washington v. Wilmore*, 407 F.3d 274, 280, n. 6 (4th Cir. 2005); *Houston v. Queen*, 606 F.App'x 725, 731 (5th Cir. 2015); *Miller v. Dunn*, 35 F.4th 1007, 1011 (5th Cir. 2022); *Burciaga v. Deutsche Bank Nat'l. Tr. Co.*, 871 F.3d 380, 384, 387-388, n. 5, n. 7 (5th Cir. 2017); *Andrade*, 954 (Sykes, CJ, concurring); *Dodson*, 755, n. 5; *Ball v. Mayfield*, 566 F.App'x 765, 769, n. 3 (10th Cir. 2014).

Post *Exxon*, there are numerous dissenting and/or concurring opinions due to disagreements among circuit judges. *Butcher v. Wendt*, 975 F.3d 236, 242-244, 251 (2nd Cir. 2020) (Menashi, J, concurring); *In re Knapper*, 407 F.3d 573, 584 (3rd Cir. 2005) (Rosenn, J., concurring); *Adkins v. Rumsfeld*, 464 F.3d 456, 473 (4th Cir. 2006) (Widner, J, concurring); *Stratton v. Mecklenburg Cnty. Dept. of Soc. Servs.*, 521 F.App'x 278, 292-294 (4th Cir. 2013) (Gregory, J, concurring); *Berry v. Schmitt*, 688 F.3d 290, 305-306 (6th Cir. 2012) (Zouhary, J., concurring); *Davis v. Johnson*, 664 F.App'x 446, 451-452 (6th Cir. 2016) (White, J. concurring and dissenting); *RLR Invs., LLC v. City of Pigeon Forge, Tn.*, 4 F.4th 380, 396-406 (6th Cir 2021) (Clay, J., dissenting); *Pletos v. Makower*

Abatte, etc., 731 F.App'x 431, 437–438 (6th Cir. 2018) (Guy, J., concurring); *Robins v. Ritchie*, 631 F.3d 919, 929, 930 (8th Cir. 2015) (Beam, J, joined by Smith, J, concurring and dissenting); *Dodson* 756–760 (Melloy, J., concurring); *Thurman v. Judicial Correction Servs., Inc.*, 760 F.App'x 733, 738–740 (11th Cir. 2019) (Martin, J., dissenting); *Berene v. Nationstar Mortg. LLC*, 686 F.App'x 714, 717 (11th Cir. 2017) (Black, J, dissenting).

Post *Exxon*, there are numerous instances where the circuit judges agreed on the *Rooker–Feldman* outcome, but saw the matter sufficiently differently to warrant an alternative discussion. *Hansen v. Miller,* 52 F.4th 96, 102–103 (2d Cir. 2022) (Menashi, J, concurring); *Washington v. Wilmore*, 407 F.3d 274, 284 (4th Cir. 2005) (Shedd, J, concurring); *Stinnie v. Holcomb*, 734 F.App'x 858, 868–871 (4th Cir. 2018) (Gregory, CJ, dissenting); *VanderKodde*, 404–409 (Sutton, CJ, concurring); *Loubser v. Thacker*, 440 F.3d 439, 444 (7th .Cir. 2006) (Sykes, J, concurring & dissenting); *Andrade*, 951–954 (Sykes, CJ, concurring); *In re Harbin*, 486 F.3d 510, 525 (9th Cir. 2007) (Cudahy, J., concurring & dissenting); *Karnecki v. City of Sisters,* 2019 No. 18–35079, Dkt. Entry #47–2 (9th Cir. May 31, 2019) (Nelson, J, concurring); *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1155–1156 (9th Cir. 2021) (Collins, J, concurring); *Seminole Tribe of Fla. v. Fla. Dept. of Rev.*, 750 F.3d 1238, 1252–1253 (11th Cir. 2014) (Jordan, J., concurring and dissenting); *Target Media Partners v. Specialty Mktg Corp.*, 881 F.3d 1279, 1289–1292 (11th Cir. 2018) (Newsom, J, concurring).

Post *Exxon*, the circuit courts and judges have associated the following words (and their

grammatical variants) and phrases with *Rooker-Feldman*:

—"complicated," *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 167 (3rd Cir. 2010); *King v. City of Crestwood, Mo.*, 899 F.3d 643, 648, n. 4 (8th Cir. 2018); *RLR Invs., LLC v. City of Pigeon Forge, Tn*, 4 F.4th 380, 386, 387-388 (6th Cir 2021); *Ball v. Mayfield*, 566 F.App'x 765, 769, n. 3 (10th Cir. 2014); *Edwards v. City of Jonesboro*, 645 F.3d 1014, 1018 (8th Cir. 2011);

—"confusing," *Miller v. Dunn*, 35 F.4th 1007, 1008, 1012 (5th Cir. 2022); *Andrade*, 951, 952 (Sykes, CJ, concurring); *Bolden v. City of Topeka, Ks.*, 441 F.3d 1129, 1138, 1139, 1140, 1143 (10th Cir. 2006); *Campbell v. City of Spencer*, 682 F.3d 1278, 1281 (10th Cir. 2012); *Arnold v. KJD Real Estate, LLC*, 752 F.3d 700, 706 (7th Cir. 2014);

—"difficult," *In re Athens/Alpha Gas Corp.*, 715 F.3d 230, 234 (8th Cir. 2013); *RLR Invs., LLC v. City of Pigeon Forge, Tn*, 4 F.4th 380, 386, 388, 395 (6th Cir 2021); *Dorce v. City of N.Y.*, 2 F.4th 82, 94 (2nd Cir. 2021); *Brown v. Bowman*, 668 F.3d 437, 442 (7th Cir. 2012);

—"murky," *King v. City of Crestwood, Mo.*, 899 F.3d 643, 647, 648 (8th Cir. 2018); *In re Athens/Alpha Gas Corp.*, 715 F.3d 230, 235 (8th Cir. 2013);

—"uncertainty.": *Miller v. Dunn*, 35 F.4th 1007, 1008, 1011 & n. 4 (5th Cir. 2022)

—"dubious," *Efreom*, 19, n. 11;

—"quagmire," *Veasley*, 294;

—"not [] clear," *Target*, 1291 (Newsom, J, concurring); *May v. Morgan Cnty. Ga.*, 878 F.3d 1001, 1004 (11th Cir. 2017);

—"hard to decipher," *Behr*, 1211;

—"fuzzy on the margins," *Athens/Alpha*, 234–235

—"disentangle these complexities," *McKithen v. Brown*, 481 F.3d 89, 97 (2nd Cir. 2007).

The foregoing is by no means exhaustive. The more one looks the more one finds. Further inter- and intra-Circuit splits and disharmony appear below. App.42–43.

II. This Court should decide an important federal question: Should *Rooker-Feldman* be abolished as superfluous for being subsumed under injury-in-fact jurisprudence

Rooker-Feldman is wholly subsumed under injury-in-fact jurisprudence, as now shown. App.32–32, 42–43.

A federal district court must always satisfy itself that injury in fact is adequately pleaded. *Ortiz v. Fibreboard Corp.*, 527 US 815, 831 (1999). If not, the claim is dismissed without need to consider *Rooker-Feldman*.

If injury in fact is adequately pleaded, could *Rooker-Feldman* somehow bar the action? No, and here's why not. *Exxon* held that *Rooker-Feldman* applies only when federal plaintiffs "complain[] of injuries caused by state-court judgments." *Exxon*, 284. However, complaining of an injury caused merely by a judgment is not adequately pleading injury in fact. Injury in fact means "suffer[ing] the 'invasion of a legally protected interest.'" *Gill v. Whitford*, 138 S.Ct. 1916, 1920 (2018). But suffering merely an adverse or erroneous judgment is not suffering the invasion of a legally-protected interest, because one has no legally-protected interest in a favorable or correct judgment. *Bonner v. Gorman*, 213 US 86, 91 (1909). Accordingly, when the federal plaintiff's

claim is barred by *Rooker-Feldman*, the plaintiff failed to plead injury in fact. Contrapositively, when one adequately pleads injury in fact, *Rooker-Feldman* is inapplicable. Q.E.D.

In sum, a federal court's resolution of the injury-in-fact inquiry renders the *Rooker-Feldman* inquiry superfluous. Therefore, this Court should grant certiorari to finally "inter" and give a "requiem" for *Rooker-Feldman*. *Lance v. Dennis*, 546 US 459, 467-468 (2006) (Stevens, J, dissenting); *VanderKodde*, 405, (Sutton, CJ, concurring).

III. This Court should decide the important federal question as to whether *Feldman* should be partially overturned

A. One of plaintiff Feldman's causes of action which *Feldman* barred, would not be barred under *Exxon*

Was Justice Stevens correct in dissenting to *Feldman*? *Feldman*, 488-490 (Stevens, J, dissenting). App.49.

Federal plaintiff Feldman pleaded five causes of action. *Feldman*, 469, n. 3. The fifth cause of action ("Feldman's Count 5") alleges as follows.

DC Bar admission Rule 461(b)(3) "requires applicants to have graduated from an approved law school." *Feldman*, 463, 464-465. Feldman had not. *Id.*, 465. Nonetheless, Feldman petitioned the DC Court of Appeals ("State Court")[6] to waive Rule 461(b)(3) for him. *Id.*, 466-467. The State Court refused:

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[6] 28 USC 1257(b).

> "[O]n consideration of the petition ... to waive ... Rule 46[7] ..., it is ORDERED that applicant's petition is denied."

Id., 468, footnote added. Hereinafter, this order shall be designated, "Feldman Judgment."

Feldman's Count 5 continues:

> [B]ecause the [State Court] had repeatedly waived [Rule 461(b)(3)] in the past to permit admission to the bar of persons who had not graduated from approved law schools, the court acted ... discriminatorily in refusing to consider [Feldman's] individual qualifications and ... denied him ... equal protection ... and ... due process....

Id., 468–469, n. 3.

Taken as true and liberally construed, *Jenkins v. McKeithen*, 395 US 411, 421 (1969), Feldman's Count 5 alleges that the State Court *had* considered the qualifications of other, similarly-situated persons. That is, since the court had sometimes waived Rule 461(b)(3) before, one reasonably infers that it employs certain criteria to adjudicate whether a given applicant deserves this waiver. And to so adjudicate, it considers the applicant's qualifications. Accordingly, Feldman's grievance was that the State Court had considered qualifications of other, similarly-situated applicants, but discriminatorily refused to consider his.

Thus Feldman adequately pleaded injury in fact. Since the State Court considered the qualifycations of other, similarly-situated applicants, the Equal Protection Clause commands that his qualifications must likewise be considered. But they were not. Thus Feldman adequately pleaded

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[7] It is unclear why "46" is used instead of "461."

the invasion of his legally-protected right to equal protection.

Moreover, Feldman adequately pleaded the invasion of his legally protected right to due process. The State Court, when determining such petitions for waivers, acts judicially. *Feldman*, 479-481. Thus Feldman had the due process right to be "'heard' ... in a meaningful manner," *Armstrong v. Manzo*, 380 US 545, 552 (1965); *Boddie v. Ct.*, 401 US 371, 377 (1971). However, refusing to consider pertinent aspects of his petition deprived Feldman of his right to be meaningfully heard. One is not meaningfully heard when the court ignores what he/she/it has to say. Similarly, Feldman had the due process right of access to the court. *Edwards v. SC*, 372 US 229, 235 (1963); *Boddie*, 372, 382-383. However, when a court refuses to consider what the party has to say, it effectively denies access thereto. Thus by refusing to consider pertinent portions of Feldman's petition, the State Court invaded Feldman's due process rights to be meaningfully heard thereby, and have access thereto.

Notably, Feldman's injury *was not caused by the Feldman Judgment.* Rather Feldman's injury was the violation of his equal protection and due process rights, caused by the State Court's discriminatory refusal to consider pertinent parts of Feldman's petition.

To illuminate the foregoing, suppose, hypothetically, that during the adjudication of Feldman's petition for waiver, the State Court sent Feldman a letter explaining the criteria it invariably employs to decide whether Rule 461(b)(3) should be waived for any given applicant, and why Feldman's qualifications were

inadequate. Suppose further that the State Court issued the exact same Feldman Judgment. Well, in this scenario, Feldman's Count 5 would be vitiated. Feldman would have no grievance, since all he wanted was to be treated like others and have his qualifications duly considered. If, after such fair treatment and due consideration, Feldman's petition was denied because he was unqualified, there would be no need for Feldman's Count 5. Thus the Feldman Judgment did not cause Feldman's injury; rather his injury was caused by the State Court's refusal to treat him like others and to duly consider his petition.

Therefore, given *Exxon*'s holding - that *Rooker-Feldman* applies only when federal plaintiffs "complain of injuries caused by state-court judgments," *Exxon*, 284 - *Rooker-Feldman* does not bar Feldman's Count 5. However, *Feldman* did bar Feldman's Count 5 as an impermissible appeal. *Feldman*, 486-487. Consequently, *Exxon* implicitly overruled *Feldman*'s treatment of Feldman's Count 5.[8] This Court should grant certiorari to formally overturn *Feldman*'s treatment of Feldman's Count 5.

B. *Feldman*'s perfunctory treatment of Feldman's Count 5, which *misstates* Feldman's Count 5, should be overturned

Feldman's treatment of Feldman's Count 5 consists of just three sentences. *Feldman*, 486-487. Remarkably, the first sentence *misstates* Feldman's Count 5:

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[8] Astoundingly, *Exxon* never mentions Feldman's Count 5. *Exxon*, 286.

> [Feldman's Count 5] alleg[es] that the [State Court] acted ... discriminatorily *in denying* [*Feldman's*] *petition*[]....

Id., 486-487, emphasis added. *No!* Feldman's Count 5 alleges the court acted discriminatorily in *refusing to consider Feldman's qualifications. Id.*, 468-469, n. 3. Feldman had no legally-protected interest in having his petition granted, but *did* have legally-protected interests in being treated like others similarly situated, and in having his qualifications meaningfully considered.

Feldman nonchalantly proclaims that the adjudication of Feldman's Count 5 required "review" of the Feldman Judgment, which could be performed solely by this Court. *Id.*, 476, 486-487. However, adjudication of Feldman's Count 5 requires *factual* determinations, namely, the extent to which the State Court considered the qualifications of others similarly-situated, and whether it considered Feldman's. Certiorari is not a means to develop a new, factual record. *Russell v. Southard*, 53 US 139, 159 (1851). The question in Feldman's Count 5 is not whether Feldman should be admitted to the bar (or allowed to sit for the bar exam), but whether the State Court *in fact* denied him due process and equal protection (by refusing to consider his qualifications while considering the qualifications of others similarly situated). When a subsequent court adjudicates these factual questions, it "does not act as a court of review," but adjudicates "'a new case arising upon new facts, although having relation to the validity of an actual judgment.'" *Johnson v. Waters*, 111 US 640, 667-668 (1884).

One might argue that the aforementioned factual issues - the extent to which the State Court

considered the qualifications of others and of Feldman – had already been determined adversely to Feldman in the state-court proceedings. See *Feldman*, 468. But then Feldman's Count 5 would be barred by preclusion, not by *Rooker-Feldman* as an impermissible appeal. *Exxon*, 284, 293. Relitigating is not appealing.

Finally, Feldman confused everyone by asking for the wrong remedy – namely, admission to the bar or permission to take the bar exam. *Feldman*, 468–469. However, Feldman prayed for too much relative to his injury. Since his grievance was that his qualifications were ignored, his appropriate remedy was to reopen the state-court proceedings so that his qualifications would be duly considered, i.e., to "restore[] [him] 'to the position he would have occupied had due process of law been accorded to him in the first place.'" *Peralta v. Heights Med. Ctr., Inc.*, 485 US 80, 86–87 (1988). If upon such reopening and due consideration his qualifications were found inadequate, then the exact same Feldman Judgment could be re-issued. But then Feldman's injury would have been redressed, since his petition would be adjudicated in accordance with equal protection and due process, thereby redressing his grievance. If his qualifications were found adequate, then presumably he could proceed further in the bar-admission process.

IV. The Ninth Circuit's Decision conflicts with a line of Rule 60(b) cases, holding that federal district courts possess original jurisdiction to reopen federal-district-court judgments when parties are denied due process

In a federal-question action (as here), "'*Rooker-Feldman* ... merely recognizes that 28 USC § 1331 ... is a grant of original jurisdiction, ... not ... appellate jurisdiction'" to the federal district courts. *Exxon*, 291-292. Thus federal district courts have no jurisdiction to adjudicate within the appellate process respecting state-court judgments. By that same logic, federal district courts likewise have no jurisdiction to adjudicate within the appellate process respecting *federal-district-court* judgments. After all, nothing in 28 USC § 1331 distinguishes between a federal district court's power over state-court judgments vis-à-vis its power over federal-district-court judgments.

Nevertheless, federal district courts can reopen federal-district-court judgments. For instance, federal district courts can reopen federal-district-court judgments under Rule 60(b)(6) "'whenever ... appropriate to accomplish justice,'" *Liljeberg v. Health Servs. Acq. Corp.*, 486 US 847, 863-864 (1988); 7 Moore's Fed. Prac., § 60.27[2], 295 (2d ed. 1993), and under Rule 60(b)(4) "if the rendering court ... acted in a manner inconsistent with due process...." *Grace v. Bank Leumi Tr. Co. of NY*, 443 F.3d 180, 193 (2nd Cir. 2006); *NY Life Ins. Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996); *Grun v. Pneumo Abex Corp.*, 163 F.3d 411, 423-424 (7th Cir. 1998). *Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994); *Burke v. Smith*, 252 F.3d 1260, 1263-1266 (11th Cir. 2001).

Consequently, since federal district courts possess no appellate jurisdiction over federal-district-court judgments, but can reopen such judgments under Rule 60(b) to accomplish justice and redress due process violations, it follows ineluctably that 28 USC § 1331 grants federal district courts *original* jurisdiction to reopen federal-district-court judgments to accomplish justice and redress due process violations. Furthermore, as noted above, nothing in 28 USC § 1331 distinguishes between a federal district court's power over state-court judgments vis-à-vis its power over federal-district-court judgments. And therefore, based on all of the foregoing, 28 USC § 1331 must likewise grant federal district courts *original* jurisdiction to reopen state-court judgments to accomplish justice and redress violations of due process.

Here, Kleidman's Due Process Claim is akin to a proceeding under Rule 60(b)(4). Namely, Kleidman wants the federal district court to reopen B268541 because Respondents "acted in a manner inconsistent with due process...." *supra*, 18. Since 28 USC § 1331 grants federal district courts original jurisdiction over such proceedings to reopen federal-district-court judgments, it likewise grants federal district courts original jurisdiction over such proceedings to reopen state-court judgments. Accordingly, the federal district court here had original jurisdiction over Kleidman's Due Process Claim. And therefore, *Rooker-Feldman* is inapplicable.

Since the Ninth Circuit's Decision imposed *Rooker-Feldman*, it conflicts with the aforementioned Rule 60(b) jurisprudence. This Court should grant certiorari to resolve the conflict.

V. The Ninth Circuit's Decision conflicts with decisions in other Circuits recognizing a 'due process exception' to *Rooker-Feldman* (i.e., holding *Rooker-Feldman* inapplicable to allegations that state-court proceedings violated due process); furthermore, there is split authority on this issue

The so-called 'due process exception' to *Rooker-Feldman* means that *Rooker-Feldman* is inapplicable to a federal plaintiff's claim of violations of due process in the state-court proceedings. Here, Kleidman's Due Process Claim would avoid *Rooker-Feldman* under this exception. The Ninth Circuit Decision refused to acknowledge this exception. The Circuits are split here. This due process exception to *Rooker-Feldman* is what *Efreom* called a "jurisprudential thicket." *Id.*, 19, n. 11, and according to Wright & Miller:

> State-court disregard of due process rights creates genuine trouble for ... *Rooker-Feldman*....

Wright, *supra*, § 4469.3, 169-170.

A. The Ninth Circuit's Decision conflicts with (or is at odds with) Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Circuit decisions, recognizing a due process exception to *Rooker-Feldman*

In *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998), Chalker obtained a favorable state-court decision against Catz. *Id.*, 281. In the federal action, Catz alleged that the state-court proceedings deprived him of adequate notice, and of "a full and fair opportunity to be heard....." *Id.*, 281, 294. Catz prayed for a declaration that the state-court

judgment was "void." *Id.*, 291. *Catz* found *Rooker-Feldman* inapplicable:

> Catz's due process allegation does not implicate the merits of the [state-court] decree, only the procedures leading up to it. ... [Catz] attacks as unconstitutional "the *manner* in which the ... state[-]court proceeding was conducted." ... [P]ermitting jurisdiction ... does not contravene ... *Rooker-Feldman* ..., the prohibition of reviewing the substance of state[-]court judgments. ... [D]ue process challenge[s] to state proceedings [are] not barred by [*Rooker-Feldman*].... [T]he claims of ... procedural violations of Catz's constitutional rights do not rest on any substantive wrongness of the rulings of the [state] courts, and ... *Rooker-Feldman* ... does not bar ... this action.

Id., 294, 295, footnote omitted. App.53-54, 58.

Catz is directly on point. Kleidman's Due Process Claim alleges that Respondents' *procedures* and *manner* of adjudicating B268541 violated Kleidman's due process rights, without challenging the *merits* or *substantive wrongness* of Respondents' decision. Thus *Rooker-Feldman* is inapplicable to Kleidman's Due Process Claim, as in *Catz.*

Although *Catz* is pre-*Exxon*, *Exxon* confirmed *Catz*'s approach. *Rooker-Feldman* was inapplicable because Catz's injury was not caused by the judgment, but by tortious conduct leading to the deprivation of his rights to be adequately heard. *Catz*, 294 (declaring state-court decision void would not "prevent" state court "from coming to the same conclusion under constitutional

procedures," thereby showing that the state-court decision was not the cause of injury). Moreover, *Alexander v. Rosen*, 804 F.3d 1203 (6th Cir. 2015) (post-*Exxon*) cites *Catz* approvingly in a similar case. In *Alexander,* the state court ordered Alexander to pay child support. *Id.*, 1205. Alexander's federal action alleged that state officials, including a judge, "violated federal law ... *in the course of* deciding his child support obligations." *Id.*, 1205, 1206. *Alexander* found *Rooker-Feldman* inapplicable "because Alexander's alleged injury did not emerge from the state[-]court *judgment.* ... [H]e challenges the *conduct* of the individuals who ... participate[d] in that decision." *Id.*, 1206-1207 (second emphasis added).[9]The *Alexander* recognized the due process exception to *Rooker-Feldman.*

In *Loubser v. Thacker*, 440 F.3d 439 (7th Cir. 2006), Loubser alleged she was denied due process in state-court proceedings because (inter alia) state-court judges were biased and involved in a conspiracy against her. *Id.*, 441. Loubser sued (inter alia) the judges. *Id.*, 441, 442. *Loubser* found *Rooker-Feldman* inapplicable *Id.*, 441-442. *Loubser* held that a party has a due process right to uncorrupted state-court proceedings, and *Rooker-Feldman* does not bar the party's subsequent federal lawsuit to vindicate that right.

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[9] *Alexander* (at 1206) mentions *Catz* was abrogated on other grounds by *Coles v. Granville*, 448 F.3d 853 (6th Cir. 2006). *Coles* purportedly abrogated *Catz* by holding that *Catz* incorrectly "expanded *Rooker-Feldman* to encompass preclusion ... law." *Coles*, 859, n. 1. However, *Coles* does not abrogate Catz's aforementioned analysis, *supra*, 20-21, which neither applies *Rooker-Feldman* nor invokes preclusion law.

Thus *Loubser* supports a due process exception to *Rooker-Feldman*. See also *Anderson v. Anderson*, 554 F.App'x 529, 529-531 (7th Cir. 2014) (*Rooker-Feldman* inapplicable to suit against judge for corrupting state-court proceedings); *Johnson v. Il.*, 2022 U.S.App. LEXIS 35490, *4 (7th Cir. Dec. 22, 2022) (*Rooker-Feldman* inapplicable because plaintiff challenges "process by which the state courts reached their decisions").

The due process exception to *Rooker-Feldman* was similarly recognized in Second, and Third Circuit decisions. *Great Western*, 172-173, accord. *Dorce*, 92-93, 106-108. As in *Loubser*, *Land & Bay Gauging, LLC v. Shor*, 623 F.App'x 674 (5th Cir. 2015) involved an alleged "corrupt conspiracy" involving the state-court judge. *Id.*, 677. The court found *Rooker-Feldman* inapplicable since the cause of the injury was not the state-court decision, but conduct of the individuals leading thereto. *Id.*, 679-680. Thus *Land & Bay* recognized the due process exception to *Rooker-Feldman*.

Fourth and Eight Circuit decisions suggests that *Rooker-Feldman* has a due process exception. *Washington v. Wilmore*, 407 F.3d 274 (4th Cir. 2005) (recognizing in its *Rooker-Feldman* discussion the "distin[ction] between ... 'seeking review of the state[-]court decision[] ... and .... challenging the constitutionality of the process by which the state court decision[] resulted.'" *Id.*, 279-280; *Skit Int'l, Ltd. v. DAC Tech. of Ar., Inc.*, 487 F.3d 1154, 1158 (8th Cir. 2007) (same).

B. There are inter- and intra-Circuit splits - Fifth, Sixth, Seventh, Eight and Tenth Circuit decisions refused to recognize the due process exception

In *Shophar v. Johnson Cnty., Ks.*, 2021 U.S.App. LEXIS 23686 (10th Cir. Aug. 10, 2021), plaintiff Shophar alleged "he was deprived of due process because [the state-court] Judge ... granted the ... order against him 'without ... giving [him] the opportunity to be heard....'" *Id.*, *12. *Shophar* imposed *Rooker-Feldman* and held, "[We decline to] recognize a due process exception to [*Rooker-Feldman*]." *Id.*, *13-*14.

In *Price v. Porter*, 351 F.App'x 925 (5th Cir. 2009), plaintiff Price sued state-court Judge Porter, alleging he violated her due process rights in state-court proceedings, in particular alleging that Judge Porter had "been previously employed by the opposing party," and therefore should have recused himself. *Id.*, 926. Price sought to have Judge Porter's orders declared "'null and void.'" *Ibid. Price* imposed *Rooker-Feldman* because it was "a collateral attack." *Id.*, 926-927, accord *Moore v. Tx. Court of Crim. Appeals*, 561 F.App'x 427, 431 & n. 5 (5th Cir. 2014); see also *Turner v. Cade*, 354 F.App'x 108, 110, 111 (5th Cir. 2009). These decisions create an intra-Circuit split vis-à-vis *Land & Bay. supra*, 22.

Sixth Circuit decisions held there is no due process exception to *Rooker-Feldman. Raymond v. Moyer*, 501 F.3d 548, 554 (6th Cir 2007); *Hall v. Callahan*, 727 F.3d 450, 453-454 (6th Cir. 2013) (*Rooker-Feldman* bars federal plaintiffs' claim that state court violated their due process rights by ruling *sua sponte* "without meeting with the litigants"). These decisions create intra-Circuit split vis-à-vis *Catz* and *Alexander. supra*, 20-21.

In the Seventh Circuit, *Brown v. Bowman*, 668 F.3d 437 (7th Cir. 2012), plaintiff Brown alleged there was religious bias in the adjudication of his

application to the state bar, thereby challenging the "manner" by which her application was determined. *Id.*, 443, 444. *Brown* nevertheless applied *Rooker–Feldman*, thereby rejecting the due process exception. *Ibid.* This decision creates intra–Circuit split vis–à–vis *Loubser. supra*, 21..

In *Mosby v. Ligon*, 418 F.3d 927 (8th Cir. 2005), "Mosby accused the [state–court] Justices of discriminatory application of the Rules," *Id.*, 903, and that "the Rules were applied to her in a discriminatory manner in violation of the ... Constitution." *Id.*, 932. *Mosby* imposed *Rooker–Feldman. Ibid.* This decision creates intra–Circuit tension vis–à–vis *Skit. supra*, 22..

This Court should grant certiorari to resolve these inter– and intra–Circuit splits.

VI. The Ninth Circuit's Decision conflicts with this Court's *Griffin v. Griffin* and generally full–faith–and–credit jurisprudence, which empowers federal district courts to declare state–court judgments void for lack of due process

Can a federal district court declare a state–court judgment void because the court proceedings leading to judgment violated due process? Or does *Rooker–Feldman* bar such a declaration? Wright, *supra*, presents a strong argument that *Rooker–Feldman* poses no bar:

> If federal due process requirements defeat ... full faith and credit, they also should overcome ... *Rooker–Feldman.*

Wright, *supra*, § 4469.3, 169–170.

To elaborate, a state–court judgment resulting from proceedings which violated due process cannot have preclusive effect, neither in the rendering state nor any other jurisdiction. *Kremer*

v. Chem. Constr. Corp., 456 US 461, 482 (1982). *Griffin v. Griffin*, 327 US 220, 228–229 (1946). The reason being that "[d]ue process forbids any exercise of judicial power which, but for the constitutional infirmity, would substantially affect a [party's] rights." *Id.*, 231–232. Accordingly a constitutionally-infirm judgment is effectively void, hence devoid of preclusive effect, everywhere.

Consequently, a federal district court, when determining the preclusive effect of a state-court judgment, is empowered to inquire whether the judgment is constitutionally infirm, i.e., whether the manner in which that judgment was adjudicated violated due process requirements. If such violation is found, the federal district court is empowered to declare as much; thereby declaring the judgment devoid of preclusive effect; and thereby, in effect, declaring it void.

In *Griffin*, the plaintiff-respondent had previously obtained a NY State judgment against the defendant-petitioner in 1938 ("1938 Judgment"). *Id.*, 223. The plaintiff-respondent then sued in DC federal district court to enforce the 1938 Judgment in another jurisdiction. *Ibid.*. *Griffin* held that there "was a want of judicial due process" in the New York proceedings leading to the 1938 Judgment, and accordingly, "the [1938 Judgment] is ineffective in New York." *Id.*, 228, 232. Consequently, the 1938 Judgment "cannot be ... enforc[ed] elsewhere," *Id.*, 232, and is "ineffective" (insofar as it imposed new liability on defendant-petitioner). *Id.*, 233. Thus *Griffin* held that the federal district court was empowered to declare the state-court judgment ineffective for want of due process. For all intents and purposes,

declaring a judgment ineffective amounts to declaring it void.

Likewise here, Kleidman has asked the district court to determine that the proceedings resulting in the B268541 decision violated due process requirements, and therefore to declare that decision void. App.41. *Griffin* supports Kleidman's theory that the district court is empowered to issue such a declaration, unbarred by *Rooker-Feldman*.

Consequently, the Ninth Circuit's Decision is in conflict with *Griffin* and the aforementioned full-faith-and-credit principles. This Court should grant certiorari accordingly.

VII. Whether there is a due process exception to *Rooker-Feldman* is an important federal question which this Court should resolve

The right to due process implies the right to a ""remedy by suit, or action at law, whenever that right is invaded."" *Merrill Lynch, etc. v. Curran*, 456 US 353, 375, n. 54 (1982) (and cases cited). What, then, is a party's remedy when his/her due process rights to a fair trial in court proceedings were violated? Well, the only possible avenues are appellate review or a new, original action. Which is it? If there is a due process exception to *Rooker-Feldman*, an original action is proper. If not, the aggrieved party would be constrained to vindicate his/her constitutional rights only through the appellate process.

A. Without a due process exception, judicial officers, whose decisions are subject to merely discretionary appellate review, would have license to trample on litigants' due process rights with virtual impunity

Assume in this section VII.A that a party was deprived of a fair trial in a court from which there is no right of appeal, i.e., appellate review is purely at the discretion of higher tribunals. Well, the party's constitutional right to a fair trial cannot teeter on whether a higher tribunal deigns to hear his/her case. "The right ... to due process ... must rest upon a basis more substantial than favor or discretion." *Roller v. Holly*, 176 US 398, 409 (1900), accord *Louis. & Nash. R. Co. v. Central Stock Yards Co.*, 212 US 132, 144 (1909).

The foregoing shows that when a party has no right of appeal, and the judicial officers presiding over his/her case trample on his/her right to a fair trial, he/she must have the right to an original action to secure his/her constitutional rights. Without such right, those judicial officers could trample on any party's rights to a fair trial with virtual impunity (since there is generally a low probability of obtaining discretionary appellate review). Permitting judicial officers to so trample with virtual impunity would be a "monstrous absurdity." *Kendall v. US*, 37 US 524, 624 (1838).

The inescapable conclusion is that when a litigant is in a court from which there is no right of appeal, and the judicial officers violate his/her due process rights to a fair trial, then the law must provide for a new, *original* action to allow him/her to secure those rights. And therefore, under the Petition Clause and 28 USC § 1331, the litigant must be allowed entry to a federal district court to prosecute his/her federal claims, in an original action, against those judicial officers who violated his/her constitutional rights.

The foregoing applies to Kleidman, since he had no right of appeal to the California Supreme

Court or to this Court. Cal. Const. Art. VI, §12(b) ("may" means discretionary); e.g., *Ylst v. Nunnemaker*, 501 US 797, 799 (1991) (Cal. Supreme Court "denied discretionary review"). Therefore Kleidman must be permitted to bring an original action in federal district court to secure his due process rights in B268541. The Ninth Circuit's Decision applied *Rooker-Feldman* to deny Kleidman entry to the federal district court, thereby rejecting the due process exception to *Rooker-Feldman*. This Court should grant certiorari to resolve Circuit conflicts and decide the important question of whether there is a due process exception to *Rooker-Feldman*.

B. Without a due process exception, judicial officers would have license to trample on litigants' constitutional rights to due process with virtual impunity, so long as they so trample dehors the record

Assume in this section VII.B that a party was deprived of a fair trial in a court by virtue of facts dehors the record (e.g,. a coin-flip, *supra*, 4). Generally, an appellate court is not a forum for conducting discovery, gathering evidence, and finding facts in the first instance, but rather limits its review to the record below. *Adams v. Crawford*, 116 Cal. 495, 499 (1897); *Russell v. Southard*, 53 US 139, 159 (1851). Thus in the appellate court, the aggrieved party would have no practical way of proving the extrinsic *facts* that his/her due process rights were violated, so would have no practical way of securing those rights.[10]

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[10] See *Loubser*, 441-442 (*Rooker-Feldman* inapplicable because the aggrieved party must have a "federal remedy," and an appeal to this Court is unviable since the party could

The foregoing establishes that when the judicial officers presiding over a party's case trample on his/her right to a fair trial, and do so dehors the record, the party must have the right to an original action to secure his/her constitutional rights. Without such right, those judicial officers could trample on any party's rights to a fair trial with virtual impunity, so long as they so trample dehors the record. Permitting judicial officers to do so with virtual impunity would be a "monstrous absurdity." *Kendall*, 624.

The inescapable conclusion is that when a litigant's rights to a fair trial were violated by the presiding judicial officers, and the facts establishing that violation are dehors the record, then the law must provide for a new, *original* action to allow him/her to secure his constitutional rights. And therefore, under the Petition Clause and 28 USC § 1331, the litigant must be allowed entry to a federal district court to prosecute his/her federal claims against those judicial officers who violated his/her constitutional rights.

The foregoing applies to Kleidman, since the question of whether Respondents ignored Kleidman's arguments is a factual question dehors the record. Therefore Kleidman must be permitted to bring an original action in the federal district court to secure his due process rights in B268541. The Ninth Circuit's Decision applied *Rooker-Feldman* to deny Kleidman entry to the federal district court, thereby rejecting the due process exception to *Rooker-Feldman*. This Court should

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not "present evidence" to this Court in its appellate capacity.

grant certiorari to resolve Circuit conflicts and decide the important question of whether there is a due process exception to *Rooker-Feldman.*

VIII. The Ninth's Circuit's Decision conflicts with Seventh, Eighth and Eleventh Circuits decisions, which hold that *Rooker-Feldman* is inapplicable when the federal plaintiff had no reasonable opportunity to present his/her federal claims in the state-court proceedings; moreover, there is inter- and intra-Circuit conflict on this issue

Kleidman argued that *Rooker-Feldman* is inapplicable because he had no reasonable opportunity to be heard on his Due Process Claim in the state-court proceedings. App.37, 56-58. The Ninth Circuit's Decision made no mention thereof. App.1-2. There is inter-Circuit conflict on this issue. Compare *Andrade*, 950; *Riehm v. Engelking*, 538 F.3d 952, 964-965 (8th Cir. 2008); *May v. Morgan Cnty. Ga.*, 878 F.3d 1001, 1005 (11th Cir. 2017); *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1286-1287 (11th Cir. 2018); with *Abbott v. Mi.*, 474 F.3d 324, 330 (6th Cir. 2007), *Myers v. Wells Fargo Bank, NA*, 685 F.App'x 679, 681 (10th Cir. 2017). There is even intra-Circuit conflict within the Seventh Circuit. Cf. *Andrade*, 950 with *Kelley v. Med-1 Solutions, LLC*, 548 F.3d 600, 607 (7th Cir. 2008).

Whether there is a "reasonable opportunity' exception to *Rooker-Feldman* is an important federal question because it generalizes the issues raised in Section VII. *supra*, 25-28. Namely, if the presiding judicial officers trample on a litigant's due process rights, and he/she has no reasonable opportunity to vindicate those rights in the state-court proceedings themselves, then (as argued in

VII, *supra*, 25–28) the law must provide some other avenue of relief. Therefore, under the Petition Clause and 28 USC § 1331, the litigant must be allowed to prosecute an original action in federal district court to vindicate those rights.

This Court should grant certiorari to resolve the Circuit conflict and decide this important federal question of whether there is a 'reasonable opportunity' exception to *Rooker–Feldman*.

IX. The Ninth Circuit's Decision conflicts with decisions of other Circuits, which, post-*Exxon*, reject "inextricably intertwined" as grounds to impose *Rooker–Feldman*; furthermore, there is inter- and intra-Circuit split on the 'inextricably intertwined' test

Feldman used the phrase, "inextricably intertwined." *Feldman*, 485. The Ninth Circuit's Decision imposed *Rooker–Feldman* on Kleidman's Due Process Claim because (inter alia) it was "'inextricably intertwined'" with the state-court judgment. App.1–2. Kleidman disputed the legitimacy of the "inextricably intertwined" test. App.47.

Circuit courts and judges have observed that "inextricably intertwined" has caused substantial confusion and difficulties. *Behr*, 1211–1212, *Campbell v. City of Spencer*, 682 F.3d 1278, 1282–1283 & n. 2 (10th Cir. 2012); *Richardson v. Koch Law Firm, PC*, 768 F.3d 732, 734 (7th Cir. 2014); *Andrade*, 954 (Sykes, CJ, concurring); *Dodson*, 758–760 (Melloy, J., concurring); *VanderKodde*, 406 (Sutton, CJ, concurring); *Bolden*, 1140.

A. The Ninth Circuit's Decision conflicts with Second, Third, Fourth, Fifth, Sixth, Seventh, Tenth and Eleventh Circuit decisions

The Ninth Circuit's Decision conflicts with decisions in the Second, Third, Fourth, Fifth, Sixth, Seventh and Tenth Circuits, which, based on *Exxon*, reject invoking "inextricably intertwined." Some hold that "'inextricably intertwined' has no independent content," and/or "does not create an additional legal test." *Hoblock*, 86-87; *Great Western*, 169-170; *Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 340 (4th Cir. 2022); *McCormick v. Braverman*, 451, F.3d 382, 394-395 (6th Cir. 2006); *Bolden*, 1141. See also *Truong v. Bank of Am., NA*, 717 F.3d 377, 385 (5th Cir. 2013) ("'inextricably intertwined' ... devoid of substantive content"); *Milchtein v. Chisholm*, 880 F.3d 895, 898 (7th Cir. 2018) ("'inextricably intertwined' ... should not be used as a ground of decision"); *Behr*, 1212 ("considering whether ... claim is 'inextricably intertwined' ... is merely a way of ensuring that courts do not exercise jurisdiction over the appeal of a state[-]court judgment simply because the claimant does not call it an appeal of a state[-]court judgment"); see also *Dodson*, 758-759 (Melloy, J., concurring) (collecting cases); see also *Andrade*, 954 (Sykes, CJ, concurring).

Third and Sixth Circuit decisions boldly assert that *Exxon* "repudiated" the "inextricably intertwined" test. *McCormick*, 394-395, accord. *Great Western*, 169.

B. There is inter-Circuit conflict as the Eight and Ninth Circuits continue to invoke "inextricably intertwined"

The Eighth Circuit continues to invoke "inextricably intertwined." *Trapp v. Gunn*, 2022 U.S.App. LEXIS 25552, *2 (8th Cir. Sep. 13, 2022); *King v. City of Crestwood, Mo.*, 899 F.3d 643, 647

(8th Cir. 2018); *Robins v. Ritchie*, 631 F.3d 919, 925 (8th Cir. 2011).

The Ninth Circuit also continues to invoke "inextricably intertwined," and did so *twelve times in 2022 alone.* App.1-2; *Conerly v. Davenport*, 2022 U.S.App. LEXIS 32627, *1 (9th Cir. Nov. 25, 2022); *Conerly v. Yang*, 2022 U.S.App. LEXIS 32624, *1 (9th Cir. Nov. 25, 2022); *McCoy v. Uale*, 2022 U.S.App. LEXIS 34628, *2 (9th Cir. Oct. 18 2022); *Carrera v. Forsberg*, 2022 U.S.App. LEXIS 34628, *1-*2 (9th Cir. Dec. 15, 2022); *Herterich v. Wiss*, 2022 U.S.App. LEXIS 20208, *1-*2 (9th Cir. July 21, 2022); *Belanus v. Mt.*, 2022 U.S.App. LEXIS 20201, *1 (9th Cir July 21, 2022); *Ramirez v. Cnty. of El Dorado*, 2022 U.S.App. LEXIS 14956, *2 (9th Cir. May 31, 2022); *Ezor v. McDonnell*, 2022 U.S.App. LEXIS 10860, *2 (9th Cir. Apr. 21, 2022); *Lindow v. Wallace*, 2022 U.S.App. LEXIS 10711, *1 (9th Cir. Apr. 20, 2022); *Garau v. L.A. Cnty. Sheriff's Dept.*, 2022 U.S.App. LEXIS 2137, *2 (9th Cir. Jan. 25, 2022); *Hooper v. Brnovich,* 56 F.4th 619, 624-625 (9th Cir. 2022).

C. There is also intra-Circuit conflict

Although the Second, Third, Fifth, Sixth, Seventh, Tenth and Eleventh Circuits have published opinions calling for abandoning the "inextricably intertwined" test, judges in these courts persist in invoking it. *Thomas v. Martin-Gibbons,* 857 F.App'x 36, 39 (2nd Cir. 2021); *Silverberg v. City of Phila.*, 847 F.App'x 152, 155, 156 (3rd Cir. 2021); *Nunu v. Tx.*, 2022 U.S.App. LEXIS 6983 *4, *7 & n. 3 (5th Cir. Mar. 17, 2022); *Davis v. Johnson*, 664 F.App'x 446, 449 (6th Cir. 2016); *Andrade*, 950; *Id.*, 954 (Sykes, CJ, concurring) (discussing intra-Circuit split); *St. George v. Weiser*, 2022 WL 17999564, *2 (10th Cir.

Dec. 29, 2022); *Johnson v. Brock*, 2021 U.S.App. LEXIS 21285, *3–*5, *8–*9 (11th Cir. Jul. 19, 2021).

D. What's more, there is inter-Circuit conflict on what "inextricably intertwined" means

What's more, there is inter-Circuit conflict on what "inextricably intertwined" even means. A Ninth Circuit decision holds that a federal plaintiff's claim is "inextricably intertwined" with the state-court decision "if 'the relief requested in the federal action would effectively ... void [the state court's] ruling.'" *Hooper*, 624–625. An Eighth Circuit decision holds that a federal plaintiff's claim is "inextricably intertwined" with the state-court decision "if the federal claims can succeed only to the extent the state court wrongly decided the issues before it." *Robins*, 925.

These definitions are different. A court can declare a state-court decision void for lack of due process without determining that the state court wrongly decided any issue before it. Here, Kleidman's Due Process Claim seeks to declare the B268541 decision void for lack of due process, but does not challenge the correctness of what Respondents decided.

X. Certiorari should be granted even if Kleidman's arguments are invalid

Kleidman has presented arguments (inter alia) that:

—*Rooker-Feldman* is superfluous,

—*Feldman* was wrongly decided, in part,

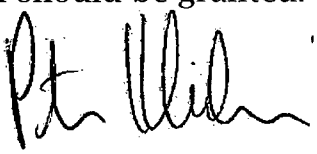
—the Ninth Circuit's Decision conflicts with Rule 60(b) jurisprudence and full-faith-and-credit jurisprudence,

—the 'due process exception' and 'reasonable opportunity exception' are legitimate exceptions to *Rooker-Feldman.*

Even if Kleidman is wrong, this Court should still grant certiorari to explain the flaw in reasoning. Such explanation would surely benefit the legal community by shedding light on the 'complex,' 'difficult,' 'complicated,' 'confusing,' 'murky,' 'uncertain,' 'unclear,' 'fuzzy' nature of *Rooker–Feldman. supra*, 5, 12.

CONCLUSION

This petition for certiorari should be granted.



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