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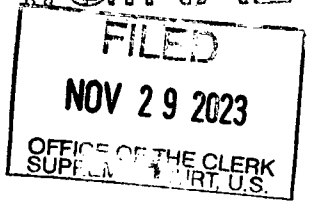

IN THE

SUPREME COURT OF THE UNITED STATES

JEREMY KERR - PETITIONER

vs.

ROBERT POLLEX, et al. - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE US COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Jeremy Kerr 686-150

North Central Correctional Institution

PO Box 1812

Marion, OH 43301

QUESTIONS PRESENTED

Rooker-Feldman

(1) Whether the Rooker-Feldman Doctrine barres a collateral attack on void ab initio state court judgment rendered without subject matter jurisdiction? Specifically, can a federal court review a state court record to determine whether the state court had jurisdiciton to render its judgment?

(2) After determining that the state court lacked jurisdiction to render its judgment; Whether a federal court can declare the state court judgment void ab initio and refuse to give it credit and validity?

(3) Whether the Rooker-Feldman Doctrine barres a collateral attack on a void ab initio state court judgment that was rendered before the commencement of the federal action? Specifically, can a "state court loser" bring a collateral attack on a void ab initio state court judgment in the federal court?

(4) Whether the Rooker-Feldman Doctrine is a Supreme Court created doctrine that prohibits the lower courts from "carving out" exceptions?

(5) Whether there are "exceptions" to Rooker-Feldman? And, if so, whether there is an "exception" when the state court judgment was rendered without subject matter jurisdiction?

(6) Whether there is a difference between an "Appellate Review" and a "Collateral Attack Review"? Specifically, whether

(6) 28 USC 1257 barres a federal court from inquiring whether a state court had jurisdiction to render its judgment?

(7) Whether a collateral attack on a void ab initio state court judgment satisfies jurisdiction under 28 USC 1343? Specifically, whether a void ab initio state court judgment, rendered without subject matter jurisdiction, violates the Due Process clause of the 14th Amendment?

(8) When a federal court dismisses a collateral attack on a state court judgment under Rooker-Feldman, without any determination on whether the state court had jurisdiction to render its judgment; Does Rooker-Feldman effectually give the state court judgment more effect than state law allows?

Heck v Humphrey, 512 US 477 (1994)

(9) Whether a federal declaration that a state court judgment is void ab initio is a "Favorable Termination" under Heck? And, if so, whether that "Favorable Termination" may be granted in a federal action for damages, or, must the "Favorable Termination" be granted before the federal action for damages commences?

(10) When the success of a state law claim wholly relies on the success of a 1983 claim; Whether the state law claim accrues with the 1983 claim when "Favorable Termination" is granted?

Wrongful Incarceration, 1983 Claim

(11) Whether Wrongful Incarceration is a species of substantive due process that does not require an allegation that some specific guarantee of the Constitution was violated?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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RELATED CASES

Kerr v Pollex, et al., No 3:21-CV-1750, US District Court for the Northern District of Ohio. Judgment entered September 27, 2022. Crim.R. 59(e) motion denied on October 27, 2022.

Kerr v Pollex, et al., No. 2022-3993, US Court of Appeals for the Sixth Circuit. Judgment entered August 11, 2023. Petition for Rehearing en banc denied on October 11, 2023.

TABLE OF AUTHORITIES CITED

FEDERAL CASES:

FEDERAL CASES (Con't)

OHIO CASES

FEDERAL STATUTES

OHIO STATUTES

FEDERAL RULES

CONSTITUTION

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The Opinion of the United States Court of Appeals appears at APPENDIX A to the petition, and is reported at 2023 US App LEXIS 21064.

The Opinion of the United States Distrct Court appears at APPENDIX B to the petition, and is reported at 2022 US Dist LEXIS 175261.

The Opinion of the United States Court of Appeals denying Rehearing en bank appears at APPENDIX C to the petition, and is reported at 2023 US App LEXIS 27029.

The Opinion of the United States District Court denying Rule Rule 59(e) appears at APPENDIX D to the petition, and is reported at 2022 US Dist LEXIS 196070.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 11, 2023.

A timely petition for rehearing en bank was denied by the United States Court of Appeals on October 11, 2023, and a copy of the order denying rehearing appears at APPENDIX C.

The jurisdiction of this Court is invoked under 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art IV, section 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 be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

28 USC 1738

The Acts of legislatures of any State, Territory or Possesion of the United States, or copies thereof, shall be authenticated by affirming 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 and Possession from which they are taken.

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 when the validity of a statute of any State is drawn in question on the grounds 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 purposes of this section, the term "Highest Court of a State" includes the District of Columbia Court of Appeals.

** Please take note that (1) this statute only has effect on "Final Judgments; (2) a void judgment is a nullity, and by its nature, is not a "Final Judgment"; (3) Rooker-Feldman is a mechinism that enforces this statute.

Therefore, Rooker-Feldman cannot barre a district court from (1) reviewing the state court record to determine whether the state court had jurisdiction to render its judgment; and, (2) declaring the state court judgment void ab initio.

28 USC 1331

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

28 USC 1343

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherence of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of state law, statute, ordinace, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by Act of Congress providing for equal rights of citizens or of all persons within jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section-

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USC 1983

Every person who, under color of any statute, ordanance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or ommission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declatory decree was violated or declatory relief was unavailable.

For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

"Rooker-Feldman Derangement", a mystical spell that is triggered whenever intellegent federal judges come accross the Rooker-Feldman Doctrine, causes hyper-sensitivity to Rooker-Feldman dicta, paralizing the ability to recognize the principles of 28 USC 1257, 28 USC 1738, 28 USC 1331 and 28 USC 1343. This disease has infected the majority of Circuit Courts. Now, it has fully infected the Sixth Circuit.

The following is a concise statement of the case.

In the Northern District of Ohio, Petitioner, ("Kerr") filed his Complaint for Declatory Judgment [28 USC 2201], which clearly stated in the preface, that:

> This action is a collateral attack on two void ab initio state court judgments issued in the complete absence of subject matter jurisdiction by Judge Robert Pollex and Judge Alan Mayberry of the Court of Common Pleas of Wood County, Ohio. The Rooker-Feldman Doctrine does not bar collateral attacks on void state court judgments.

Kerr's complaint is wholly absent of any allegations that the merits of the state court judgments were wrongly decided. Nor, does the complaint request the district court to reverse, modify, correct, or in other words, "fix" the state court judgments. Rather, the Complaint asks the district court (1) to declare the judgments void ab initio; (2) to refuse to give the judgments credit; and, (3) to decide Kerr's damage claims.

In their motions to dismiss, the Defendants argued that, in the Sixth Circuit, Rooker-Feldman bars Kerr's claims because he alleged that his 1983 Wrongful Incarceration claim violates the Fourteenth Amendment. McCormick v Braverman, 451 F.3d 382, 394-

95 (6th Cir, 2006) [Rooker-Feldman only applies when the plaintiff alleges that the state court judgment itself violates the federal constitution or federal law]. This is how the Sixth Circuit interprets the phrase "inextricably intertwined" from Feldman, 460 US 462 (1983) and Exxon Mobile, 544 US 280 (2005).

However, doesn't a void ab initio state court judgment violate the due process clause of the Fourteenth Amendment? It is well-established in the Doctrine of Law of Federal Habeas Corpus that a state court criminal judgment rendered without subject matter jurisdiciton is a constitutional violation.

In Kerr's Second Motion for Leave to Amend his Complaint, he removed any paragraph or phrase that could be construed as Kerr alleging the state court judgments, themselves, violate the Constitution.

In Defendants' Oppositions to Kerr's Motion for Leave, they argued that, because Kerr's Second Amended Complaint removes all allegations that could be construed that the state court judgments violate the Constitution, Kerr now fails to state a claim.

The opposing forces of establishing jurisdiction under federal law without triggering Rooker-Feldman creates an impossible dance for the federal plaintiff, who is a "state court loser" that is exercising his constitutional right to collaterally attack a void ab initio state court judgment.

The District Court granted the Defendants' Motion to Dismiss and denied Kerr's Motions for Leave by finding:

(1) Because the state court judgments have not previously

been invalidated, Kerr's claims are barred by Heck v Humphrey, 512 US 477 (1994).

(2) Even though a district court has authority to declare a state court judgment void ab initio, Rooker-Feldman barres Kerr's claims because he is a "state court loser".

(3) Because Heck and Rooker-Feldman bar Kerr's claims, his claims are barred by the statute of limitations.

(4) Kerr's amended complaints are futile because he cannot escape Heck, Rooker-Feldman, or the statute of limitations.

(5) Kerr's amended complaints are futile also because, due to his attempt to escape Rooker-Feldman, he abandoned his 1983 Wrongful Incarceration claim.

Kerr filed a Rule 59(e) motion, in which he argued, that:

(1) The District Court has a fundamental misunderstanding of Rooker-Feldman, which only bars an "Appellate Review" [whether the merits of the case were properly decided]. And, due to its nature, Rooker-Feldman cannot bar this "Collateral Attack Review" [whether the state court had jurisdiction to render the judgment] because 28 USC 1257, itself, does not bar collateral attacks on state court judgments.

(2) Because the District Court does have authority to declare the state court judgments void ab initio, and can refuse to give them credit under 28 USC 1738; such declaration satisfies the invalidation requirement in Heck, which triggers the "Heck Deferred-Accrual Rule". [Damages from an invalid state court proceeding do not accrual until such proceeding is invalidated]. Accordingly, because Kerr's claims do not accrue until the Distrit Court declares the state court judgments void ab initio, the claims are not subject

to any statute of limitations.

(3) Kerr's Wrongful Incarceration claim is a species of substative due process rights that does not require a claim that some specific guarantee of the Constitution was violated. Lillard v Shelby County of Bd of Ed, 76 F.3d 716 (6th Cir, 1996) [Where the Sixth Circuit recognized two types of substantive due process rights: The first type includes claims asserting denial of a right priviledge, or immunity secured by the Constitution or by statute other than procedural claims under the 14th Amendment simpliciter; the other type of claim is directed at official acts which may not occur regardless of the procedural safeguards accompanying them] and, Wilson v Beebe, 770 F.2d 578, 585-87 (6th Cir, 1985) [Where the Sixth Circuit explained the origins of the Supreme Court's "shocks the conscience" and "official acts which may not take place no matter what the procedural protections accompany them" tests]. Also see, Rochin v California, 342 US 165 (1952),

The District Court denied Kerr's Rule 59(e) motion by finding:

(1) Rooker-Feldman always applies; unless, the federal plaintiff was not a party in the state court litigation.

(2) The "Heck Deffered-Accrual Rule" only applies to 42 USC 1983 claims, not state law claims.

(3) As for whether Kerr's motions for leave are futile, the District Court stated:

> Rooker-Feldman prohibits me from considering whether Kerr's state court convictions are void and, as I previously ruled, even if Kerr could

> state a plausible section 1983 claim that did not necessarily imply the invalidity of his convictions, any such claim would be barred by the two year limitations period applicable to section 1983 claims. *** Lastly, Kerr's attempt to plead a section 1983 claim for Wrong ful Incarceration arising from a general generalized constitution violation, does not rescue that claim from either Heck and Rooker-Feldman or the applicable statute of limitations.

Without question, the District Court's fundamental misunderstanding of Rooker-Feldman caused its erronious decision. "Rooker-Feldman Derangement" paralized its ability to recognize the underlying principles of 28 USC 1257, 1331, 1343, and 1738.

The District Court was adamant that, because Kerr was a "state court loser", Rooker-Feldman absolutely applies, and that the District Court could never, under any circumstances, review the state court record to determine whether the state courts had jurisdiciton to issue the judgments.

Kerr appealed to the Sixth Circuit, where he argued, that:

(1) Heck does not bar him from seeking a declaration that the state court judgments are void ab initio for lack of subject matter jurisdiciton.

(2) Rooker-Feldman did not deprive the District Court of subject matter jurisdiciton to declare the state court judgments void ab initio.

(3) None of Kerr's claims are time-barred because they had not yet accrued.

(4) Kerr did not abandoned his constitutional claim of Wrongful Incarceration by not relying on a specific amendment.

(5) Kerr's proposed amended complaints are not futile.

(6) The District Court erred by denying Kerr's Rule 59(e) motion.

The Sixth Circuit affirmed the District Court's decision by finding:

(1) Because Kerr was a party to the state court judgments, which were rendered before he filed the current action, Rooker-Feldman barred the District Court from exercising jurisdiction over his claims seeking declaration that the state court judgments are void ab initio.

The Sixth Circuit relied on Lance v Dennis, 546 US 459 (2006), in stating, "The Rooker-Feldman Doctrine 'prevents the lower federal courts from exercising jurisdiciton over causes brought by state court losers challenging state court judgments rendered before the district court proceedings commenced." However, the Sixth Circuit ignored the qualifier: "and inviting district court review and rejection of the judgment". ("Appellate Review").

(2) Because the state court judgments were not invalidated before Kerr filed his complaint, Heck barres his 1983 claims.

(3) The statute of limitations barred Kerr's state law claims.

(4) Because, even if Heck and Rooker-Feldman could be avoided Kerr's claims would still be time-barred, rendering his proposed amended complaints futile.

(5) The District Court did not abuse its discretion when it denied Kerr's Rule 59(e) motion.

The Sixth Circuit did not comment on whether Kerr abandoned his 1983 Wrongful Incarceration claim.

Kerr timely filed his Petition for Rehearing en Bank, in which he argued:

(1) Rooker-Feldman is not triggered simply by "entry of a

state court judgment before the federal action. McCormick v Braverman, 451 F.3d @ 392 (6th Cir, 2006) citing Exxon Mobile, 544 US 280, 292 (2005) ["Rooker-Feldman is not simply triggered by the entry of judgment in state court."]

(2) In Lance v Coffman, 549 US 437 (2007), the Supreme Court simply said, "Rooker-Feldman only barres subject matter jurisdicion 'over suits seeking reversal or modification of state court judgments'", or in other words -- "Appellate Review".

As a side-note, this Court's use of the words, "reversal" and "review and rejection" only serves to confuse district courts, who view declaring a state court judgment void ab iniito as a "reversal" or "review and rejection". Petitioner's point is, the dicta of Rooker-Feldman is wholly absent of a definition of what exactly constitutes an "Appellate Review" in the context of 28 USC 1257.

(3) That there is a fundamental difference between an "Appellate Review" [whether the merits of the case were properly decided] which is prohibited under 28 USC 1257, and a "Collateral Attack Review" [whether the court had jurisdiciton to issue the judgment] which is not prohibited under 28 USC 1257.

(4) The fact that Kerr is a "state court loser" is irrellevant unless he requests the District Court for an "Appellate Review".

(5) Rooker-Feldman does not forbid collateral attacks. Pennzoil v Texaco, 481 US 1, 21 (1987) (Concur, Scalia) [rejecting Pennzoil's contention that Rooker-Feldman forbids collateral review].

(6) Even though Rooker-Feldman is supposed to be limited

and narrowly applied, most federal courts broadly apply Rooker-Feldman unless the federal plaintiff satisfies an "exception" that is recognized by the Supreme Court. However, there are no "exceptions" in the Rooker-Feldman Doctrine because it always applies when a "state court loser" seeks an "appellate review" of a state court judgment.

(7) Because Rooker-Feldman is only applicable when a "state court loser" seeks an "Appellate Review", the application of Rooker-Feldman based on the fact that the challenged state court judgment was rendered before Kerr filed his Complaint, gives the void ab initio state court judgments greater effect than the state courts, themselves, would give. Johnson v De Grandy, 512 US 997, 1005 (1994) [A federal court gives no greater effect to a state court judgment than the state court itself would give]; also see, Matsushita Elec Indus Co Ltd v Epstein, 516 US 367, 377 (1996) [same].

(8) It is well established federal law, that a district court has authority to (a) inquire into whether a state court had jurisdiciton to issue a judgment; (b) refuse to give a void state court judgment credit, validity, and effect [Full Faith & Credit]; and, (c) declare the state court judgment void ab initio. See, William v North Carolina, 325 US 226, 228-29 (1945) ["The doctrine that a state court judgment should have the same credit, validity, and effect in every other court in the United States, which it had in the state where it was pronounced, comes into operation only when the jurisdiciton of the state court is not impeached, either to the subject matter or the person"]; Millken v Meyer, 311 US 457, 462 (1940) ["Where a state court judgment is challenged for want of

jurisdiction over either person or subject matter is,of course, open to inquiry"], also see, Grover & Baker Sewing Machine Co v Radcliffe, 137 US 287 (1890), Adam v Saenger, 303 US 59 (1938), Durfee v Duke, 375 US 106, 111 (1963) [If a state court did not have jurisdiction over subject matter or the person, Full Faith & Credit need not be given]; Nevada v Hall, 440 US 410, 421 (1979); Int'l Longshoremens Ass'n v Davis, 476 US 380 (1986) [Where a federal court finds a state court judgment was rendered without subject matter jurisdiction, it may declare it void ab initio and refuse to give it credit].

(10) It is well established that a claim does not accrue until the plaintiff has a complete and present case of action, that is, when the plaintiff can file and obtain relief. Wallace v Kato, 549 US 384, 388 (2007). Kerr's claims have yet to accrue because he cannot obtain relief until the state court judgments are declared void ab initio.

(11) The underlying purpose of the "Heck Favorable Termination Rule" is to establish that damages stemming from an invalid state court proceeding accrues when that proceeding is invalidated. Thus, because all of Kerr's claims wholly rely on the state court judgments being declared void ab initio, the statute of limitation have yet begun to run. [Heck Deffered-Accrual Rule].

(12) "Rooker-Feldma Derangement" has fully infected the Sixth Circuit because the court's Decision contradicts several of its earlier decisions: Hooks v Hooks, 771 F.2d 935, 941 (6th Cir, 1985) [If a state court judgment is subject to collateral attack in the state that rendered it, the judgment may be collaterally

attacked in federal court]; McCormick v Braverman, 451 F.3d 382, 392 (6th Cir, 2006) [The entry of judgment by a state court before the federal court would not trigger Rooker-Feldman. *** Rooker-Feldman is not a panacea to be applied whenever state court decisions and federal court decisions potentially or actually overlap]; Fieger v Ferry, 471 F.3d 637 (6th Cir, 2006) [Where the Sixth Circuit reversed the application of Rooker-Feldman on a "state court Loser"]; Evans v Cordray, 424 Fed Appx 537 (6th Cir, 2011) [same]; Vanderkodde v Mary Jane M Elliot PC, 951 F.3d 397 (6th Cir, 2020) [Where C.J. Sutton heavily criticized Rooker-Feldman and suggested that district courts should never apply it]; and, Hood v Keller, 341 F.3d 593, 596 (6th Cir, 2003) [The plaintiff's complaint contained no requests to reverse or modify the state court judgment]; D'Ambrosio v Marino, 747 F.3d 378, 384 (6th Cir, 2014) [Damages that stem from a state court proceeding do not accrue until the state proceeding is invalidated, if it is ever invalidated]; and, Wolf v Perry, 412 F.3d 707, 715 (6th Cir, 2005) [State law claims did not accrue until the state court proceeding was invalidated].

(13) The Panel's Decision conflicts with cases in the Fifth Circuit, where the Fifth Circuit has held that Rooker-Feldman does not preclude review of void state court judgments. Burciago v Deutsche Bank Nat'l Trust Co, 871 F.3d 380, 385 (5th Cir, 2017) citing US v Shepherd, 23 F.3d 923, 925 (5th Cir, 1984) [Holding that Rooker-Feldman does not bar a federal court from reviewing a state court record to determine if the judgment is void]; also see Mosley v Bowie County Texas, 275 Fed Appx 327, 329 (5th Cir, 2008) [same].

The Sixth Circuit denied Kerr's Petition for Rehearing en banc.

The following additional facts must also be noted:

(1) The facts alleged in Kerr's Complaint clearly demonstrate that the state court judgments are void ab initio for being rendered without subject matter jurisdiciton. As a result, the Defendants never argued that the state courts had jurisdiciton; but rather, presented an opposition based on Heck, Rooker-Feldman and the statute of limitations.

(2) In the District Court's Decision, on page 2, it acknowledges the fact that Kerr had fully served the prison sentences issued by the state court judgments, and is currently serving a sentense issued in Ottawa County, Ohio.

Therefore, Kerr is not limited to federal habeas corpus relief.

REASONS FOR GRANTING THE PETITION

This Petition presents compelling reasons under Rule 10(a) and (c) for granting Certiorari.

I. Rule 10 (a)

The Sixth Circuit's Decision conflicts with Fifth Circuit decisions on the same matter; The relationship between Rooker-Feldman and Collateral Attacks on void ab initio state court judgments. This calls for an exercise of this Court's suprevisory power.

The Fifth Circuit has held that, before Rooker-Feldman can apply, the federal court must determine whether the state court

had jurisdiction to render its judgment. See, US v Shepherd, 23 F.3d 923, 924-25 (5th Cir, 1994) [Where the Fifth Circuit reviewed the state court record and concluded the state court judgment was not void under state law, then found Rooker-Feldman applicable]; Mosley v Bowie County Texas, 275 F.Appx 327, 329 (5th Cir, 2008) [Finding Rooker-Feldman applicable because none of Mosley's arguments would render the state court judgment void under state law]; Burciaga v Deutshe Bank Nat'l Trust Co, 871 F.3d 380, 385 (5th Cir, 2019) [Rooker-Feldman only applies to state court "final judgments" and does not preclude review of void state court judgments].

Unlike Mosley, Kerr's arguments do render the state court judgments void under state law. In addition, the Sixth Circuit never entertained a review of the state court record; nor did it entertain whether Rooker-Feldman only applied to "final judgments'. Rather, it held that Rooker-Feldman applies to all judgments, whether void or not, because they were rendered before the federal action.

In support of its holdings, the Fifth Circuit relied on Rooker, 263 US @ 415 where this Court found there was no federal jurisdiction to review a state court judgment where the state court had subject matter over the underlying case. See, Burciaga, at 385-86. It seems that almost all federal courts [except the Fifth Circuit] fail to recognize the qualifier: If the state court had jurisdiction. The qualifier, itself, requires a review of the state court record inorder to determine whether the state court had jurisdiciton. Is this not the process prescribed under the Full Faith and Credit Jurisprudence? Therefore, Rooker-Feldman cannot barre this type of review.

The Fifth Circuit understands this, and has explained that applying Rooker-Feldman to a void state court judgment would give the state court judgment more credit than a state court would give it. Gauthier v Continental Diving Services, Inc, 831 F.2d 559, 561 (5th Cir, 1987) ["We decline to apply Rooker-Feldman in a way that would require a federal court to give greater deference to a state court judgment then a court of the state in which the judgment was rendered would give it".]

"Rooker-Feldman Derangement" has caused most federal courts to wholly ignore well-established legal principles, such as the Full Faith and Credit clause of the Constitution (Art IV, sec 1), through the Full Faith and Credit Act, codified under 28 USC 1738, which mandates that the judicial proceedings of any state shall have the same full faith and credit in every court within the United States as they have by law or usage in the courts of such state from which they are taken. The Act thus directs all courts to treat a state court judgment with the same respect that it would receive in the courts of the rendering state.

Accordingly, federal courts may not employ their own rules [such as Rooker-Feldman] in determining the effect of state judgments, but must accept the rules chosen by the state forum which the judgment is taken. Matsushita Elec Indus Ltd v Epstein, 516 US 367, 373 (1996) quoting Kremer v Chem Constr Corp, 456 US 461, 481-82 (1982); also see, Johnson v De Grandy, 512 US 997, 1005 (1994) ["A federal court gives no greater preclusive effect to a state court judgment than the state court itself would do"]; Union & Planters' Bank v Memphis, 189 US 71, 74 (1903) ["What effect a judgment of a state court has is a question of state law"].

The Sixth Circuit's holding that Rooker-Feldman always applies when the state court judgment was rendered before the commencement of the federal action, without any determination on whether the state court had jurisdiciton, directly violates the principle of Full Faith and Credit by giving the state judgment more credit and effect than any state court would give it. This holding is in conflict with the Fifth Circuit.

In addidtion, it should be noted that the Fifth Circuit's interpretation of Rooker is in conflict with the other Circuits' interpretation of Rooker, who see Rooker as an absolute prohibition from reviewing whether a state court had jurisdiciton. Thus, barring any collateral attacks on void ab initio state court judgments. See, Henrichs v Valley View Dev, 474 F.3d 609, 614 (9th Cir, 2007) [A request to declare a state court judgment void is squarely barred by Rooker-Feldman because such request seeks redress from injury caused by the state court judgment itself]; Alvarez v AG for Florida, 679 F.3d 1257, 1262-63 (11th Cir, 2012) [An issue before the federal court is "inextricably intertwined" with the state court judgment is success of the federal claim would effectivelly nullify the state court judgment]; Schmitt v Schmitt, 324 F.3d 484, 487 (7th Cir, 2003) [Finding Rooker-Feldman barred claim that a state court judgment is void ab initio for lack of service because plaintiff's injury is the state court judgment itself].

A LEXIS Search reveals hundreds of cases where district courts have found Rooker-Feldman barred collateral attacks on state court judgments. Those federal plaintiffs, just like Kerr, have a right to collaterally attack void state court judgments, and the federal

courts have a corrosponding duty to declare such judgments void.

II. Rule 10 (c)

The Sixth Circuit (1) has decided important questions of federal law that has not been, but should be, settled by this Court; and, (2) has decided important questions in a way that conflicts with relevant decisions of this Court.

A. "Favorable Termination"

The District Court held, and the Sixth Circuit affirmed, that, because Kerr's state court convictions were not "favorably terminated" before Kerr commenced this federal action, Heck v Humphrey, 512 US 477 (1994) barres his claims.

It is axiomatic that a federal court has authority to declare a state court judgment void ab initio, and that, such declaration satisfies the underlying principle of Heck's "favorable termination". The problem, however, is two-fold: (1) such federal declaration was not listed in Heck, a state declaration was listed; and, (2) Heck does not discuss whether the "favorable termination" can occur in a federal action for declatory judgment, such as this case.

This Court stated the following at Heck, at 487:

> A 1983 plaintiff must prove the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under section 1983. *** [T]he complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated

In addition, what compounds this issue, is that, because the

"Heck Favorable Termination" and "Heck Deffered-Accrual Rule" are rules created by this Court, the lower courts are prohibited from "carving out" exceptions. See, Kansas v UtiliCorp United, Inc, 497 US 199, 217 (1990) [instructing the lower courts that "we think it is an unwarranted and counterproductive exercise to litigate a series of exceptions" to a rule established by the Supreme Court], cited in, Pickup v Dist Court of Nowata County, 2023 US Dist LEXIS 16470 (ND of OK), at 199-200 [refusing to create a void ab initio exception to Rooker-Feldman because, "if the Supreme Court wants to create exceptions to Rooker-Feldman, it certainly knows how to create exceptions to its own doctrine, and its decision not to is telling"].

This "favorable termination" issue is similar to McDonough v Smith, 139 S. Ct. 2149 (2019), where this Court held acquittal satisfies the "favorable termination" requirement under Heck. Again, it's axiomatic that an acquittal satisfies the underlying principle of the "favorable termination" requirement; however, because "acquittal" was not listed in Heck, most of the lower courts are going to follow Heck word-for-word, which requires this Court to piecemill every "exception".

As a result, this Court must decide, like it did in McDonough, (1) whether a federal declaration that a state court judgment is void ab iniito satisfies the Heck "favorable termination" requirment; and, (2) whether the "favorable termination" can occur during the federal action, or whether the federal plaintiff must file two actions: one to obtain the declaration, then a second to be awarded damages. [A second action would not seem to be judicially efficient].

B. Heck & State Law Claims

In Heck, this Court did not discuss how the "Heck Defferred-AccrualRule" applies to state court claims whose success wholly relies on the success of a 1983 claim. As a result, most federal courts blindly apply the applicable statute of limitations for that particular state law claim, without any consideration of whether the state claim relies on a 1983 claim.

In Ohio, for example, the applicable statute of limitation for Intentional Infliction of Emotional Distress is, generally, four years under ORC 2305.09. However, when the success of that claim wholly relies on another claim, such as Malicious Prosecution which has a one-year limitation under ORC 2305.11(A), the limitation for that particular Intentional Infliction claim now becomes one-year, and accrues when the Malicious Prosecution claim accrues. See, Fourtounis v Verginis, 2015-Ohio-2518 (8th Dist), at P28-30.

The underlying reason for this procedure is based on the long held principle that "a claim does not accrue until the plaintiff has a complete and present cause of action, that is, when the plaintiff can file and obtain relief." Wallace v Kato, 549 US 384, 388 (2007).

Here, because Kerr's state law claims wholly rely on his 1983 claims, the state law claims do not accrue until "favorable termination" because such claims would infer the invalidity of the state court judgments.

At least one lower federal court agrees. In Wilson v Burga, 2023 US Dist LEXIS 56459, the Northern District of Illinois held that, in such situations, the state law claims accrue under Heck upon "favorable termination". Id at 57, note 14.

The Sixth Circuit's Decision conflicts with Wallace v Kato, 549 US 384 (2007), and such issue should be settled by this Court.

C. Rooker-Feldman

The Sixth Circuit's holding that Rooker-Feldman is applicable because the state court judgments were rendered before the federal action had commenced, with no consideration on whether Kerr was seeking an "Appellate Review", conflicts with Decisions of this Court. See, Exxon Mobil Corp v Saudi Basic Ind, 544 US 280, (2005) [Rooker-Feldman is not triggerred simply by the entry of a judgment in a state court]; and, Lance v Dennis, 546 US 459, (2006) [Rooker-Feldman prebents the lower federal courts from exercising jurisdiction over cases brought by stat court losers challenging state court judgments rendered before the district court proceeding commenced and inviting district court review and rejection of the judgment]. (and inviting "Appellate Review")

The Sixth Circuit's Decision creates a uniform rule barring any collateral attacks on state court judgments in the federal courts. It also creates a uniform rule granting state court judgments more credit and effect than state law allows.

1. Full Faith and Credit

The Sixth Circuit's Decision conflicts with Decisions of this Court holding that "a federal court gives no greater effect to a state court judgment than the state court itself would give". Johnson v De Grandy, 512 US 997, 1005 (1994) As well as, Kremer v Chem Constr Corp, 456 US 461, 481-82 (1982) where this Court held that federal courts may not employ their own rules in determining the effect of state court judgments.

Even though the Sixth Circuit did not consider Preclusion Law, it's expansion of Rooker-Feldman effectively gives the state court judgments more effect and credit than state law allows.

In addition, it must be noted, that the facts of this case is dd distinguishable from Lance v Denis, 546 US 459 (2006) where the district court conflated preclusion law with Rooker-Feldman. Again, neither the District Court, nor the Sixth Circuit, ever considered preclusion law. Nevertheless, the Sixth Circuit's Decision conflicts with this Court's Decisions on Full Faith and Credit.

In Lance, this Court gave the following warning:at 466:

> A more expansive Rooker-Feldman Rule would tend to supplant Congress' mandate under the Full Faith and Credit Act, 28 USC 1738, that federal courts "give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state from which the judgments emerged. *** Incorporation of preclussion principles into Rooker-Feldman risks turning the limited doctrine into a uniform federal rule governing the preclusive effect of state court judgments, contrary to the Full Faith and Credit Act.

Without considering Preclusion Law, the Sixth Circuit achieved what this Court feared: An expansive federal rule that gives state court judgments more credit and effect than allowed under state law.

..2. Collateral Attacks

The right to collaterally attack a void ab initio state court judgment has long been held, and is traced back to common law.

The Sixth Circuit's Decision effectively takes this ancient right away. This Court has always protected this right. See, William v North Carolina, 325 US 226, 228-29 (1945); Millken v

Meyer, 311 US 457, 462 (1940); Grover & Baker Sewing Machine Co v Radcliffe, 137 US 287 (1890); Adam v Saenger, 303 US 59 (1938); Durfee v Duke, 375 US 106, 111 (1963); Nevada v Hall, 440 US 410, 421 (1979); and Int'l Longshoremens Ass'n v Davis, 476 US 380 (1986).

The Sixth Circuit's Decision conflicts with the forementioned Decisions.

Moreover, in Pennzoil v Texaco, 481 US 1, 21 (1987) (Concur, Scalia), Justice Scalia stated that he rejected Pezzoil's contention that Rooker-Feldman forbid collateral review.

3. Federal Jurisdiciton

The Sixth Circuit's Decision effectively creates a uniform federal rule limiting federal jurisdiction of constitutional claims.

It has long been held by this Court that a void ab initio state court judgment violates the 14th Amendment. See, Ex parte Lange, 85 US 163 (1873) [Holding that a state court without subject matter jurisdiciton to enter a judgment is a violation of the Due Process clause of the 14th Amendment and such judgment can therefore be collaterally attacked in federal courts]; Ex parte Watkins, 28 US 193 (1830) [same]; In re Loney, 134 US 372 (1890) [same]; Ex parte Royall, 117 US 241 (1886) [same]; Also see, Danforth v Minnesota, 552 US 264, 271-72 (2008) [Absence of jurisdiction of the state court is indeed a basis for federal habeas relief under the Due Process clause].

Kerr has a right to collaterally attack the void ab initio state court judgments in the federal courts, and the federal courts have a corrosponding duty to provide relief. The Sixth Circuit decided important questions of federal law that should be decided by this Court; and, its decision conflicts with the forementioned decisions of this Court.

CONCLUSION

The petition presents issues of importance beyond the particular facts and parties involved. The exercise of this Court's supervisory power is required to resolve the conflicts (1) between the Sixth Circuit's Decision and the Fifth Circuit's holdings that Rooker-Feldman does not barre a federal court from reviewing a state court record to determine whether the state court had jurisdiciton to render its judgment; and, (2) between the Fifth Circuit's interpretation of Rooker and other Circuits, who have interpreted Rooker as a prohibition of the federal courts to entertain a collateral attack on a state court judgment.

Further, this Court must not ignore the importance to the public on this issue: The federal plaintiff's impossible dance between establishing jurisdiction under federal law without triggering Rooker-Feldman.

Federal interests in uniformity requires this Court to harmonize 28 USC 1257 and 28 USC 1738 with federal jurisdiciton statutes, by defining clear and easy rules. The lower federal courts must get on the same page: Rooker-Feldman cannot barre a collateral attack on a void ab initio state court judgment.

WHEREFORE, the petition for writ of certiorari should be granted.

Respectfully submitted,

Jeremy Kerr