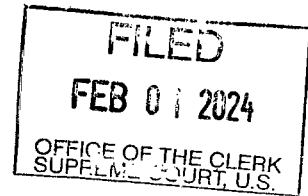


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IN THE  
SUPREME COURT OF THE UNITED STATES

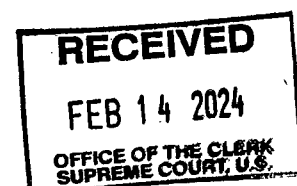


JEREMY KERR - PETITIONER  
vs  
KEITH LENZ, et al., - RESPONDENTS

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) Before applying Rooker-Feldman, whether a federal court must first determine whether the state court had jurisdiction to render its judgment?
- (2) Whether Rooker-Feldman barres a collateral attack on a void ab initio state court judgment? Specifically, can a federal court review a state court record to determine whether the state court had jurisdiction to render its judgment?
- (3) After determining that the state court judgment is void under the law of the rendering state, whether a federal court can declare the state court judgment void ab initio and refuse to give it credit and validity?
- (4) Whether Rooker-Feldman 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?
- (5) Whether Rooker-Feldman is a Supreme Court created doctrine that prohibits the lower courts from "carving out" exceptions?
- (6) 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?
- (7) Whether there is a difference between an "Appellate Review" and a "Collateral Attack Review"? Specifically, whether

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

- (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?

#### Preisner

- (9) When a state inmate brings a section 1983 action, outside of the core of habeas corpus, whether the state inmate can challenge the constitutionality of a state criminal statute when a favorable ruling would not necessarily imply the invalidity of his conviction or sentence, and such declaration is critical for determining whether the state court civil judgment against him is void ab initio.

#### Heck

- (10) When a section 1983 plaintiff does not seek "injuries" from his conviction or confinement, whether Heck barres his challenge to the instigation of a criminal action.

#### Res Judicata & Rooker-Feldman

- (11) After determining that Rooker-Feldman barres an action, whether the federal court retains jurisdiction to determine further issues, such as, whether res judicata is applicable?

## Standing

- (12) Whether a plaintiff has standing to litigate whether a state court judgment against another party is void ab initio, when such finding directly effects the validity of the state court judgment rendered against him.

## Ashcroft

- (13) Whether a complaint is "too conclusory" when it contains sufficient factual matter that is consistent with a defendant's liability, even though the complaint also contains the elements.

## RELATED CASES

Kerr v Lenz, et al., No 3:22-CV-01054, US District Court for the Northern District of Ohio. Judgment entered March 21, 2023. Rule 59(e) motion denied May 3, 2023.

Kerr v Lenz, et al., No 2023-3479, US Court of Appeals for the Sixth Circuit. Judgment entered September 19, 2023. Petition for Rehearing en banc denied on December 12, 2023.

# 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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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues 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 24837.

The Opinion of the United States District Court appears at APPENDIX B to the Petition, and is reported at 2023 US Dist LEXIS 47916.

The Opinion of the United States Court of Appeals denying Panel Rehearing appears at APPENDIX C to the Petition, and is reported at 2023 US App LEXIS 31368.

The Opinion of the United States Court of Appeals denying Rehearing en Bank appears at APPENDIX D to the Petition, and is reported at 2023 US App LEXIS 32859.

The Opinion of the United States District Court denying Rule 59(e) appears at APPENDIX E to the Petition, and is reported at 2023 US Dist LEXIS 77481.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 19, 2023.

A timely petition for rehearing en bank was denied by the United States Court of Appeals on December 12, 2023 and a copy of the order denying rehearing appears at APPENDIX D.

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 by 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 Possession 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 certification 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.

(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 mechanism that enforces this statute.

Therefore, Rooker-Feldman cannot bar 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 jurisdiction 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 furtherance 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, ordinance, 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, ordinance, 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 omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory 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.

28 USC 2254

[See APPENDIX F]

## STATEMENT OF THE CASE

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

## INTRODUCTION

This is a collateral attack on several void ab initio state court civil judgments. Such action is not barred by 28 USC 1257 because the complaint is wholly absent of any allegation that the merits of the state court judgments were wrongly decided. Nor, does the complaint request the District Court to reverse, modify, correct, or "fix" the state court judgments.

Rather, the complaint simply asks the District Court to (1) (1) declare the state court judgments void ab initio; (2) refuse to give the state court judgments credit; and, (3) to determine damage claims against several defendants for their wrong behavior in procurring the state court judgments.

## BACKGROUND

The Plaintiff, Jeremy Kerr, ("Kerr"), who is currently an Ohio inmate, is the sole shareholder of Kerr Buildings, Inc., ("KBI"), a design-build general contractor specializing in the design and construction of pre-engineered steel buildings.

Kerr is also the sole member of two limited liability companies: Beaver Creek Developement Co, LLC, ("BCD"), an Ohio corporation, and Beaver Creek Properties, LLC, ("BCP"), a Deleware corporation.

Kerr filed his Complaint for Declaratory Judgment in the Northern District of Ohio, seeking a declaration that several state court judgments are void. The judgments stem from two Breach-of-Contract cases; one in Wood County, Ohio, and another from Henry County, Ohio.

#### WOOD COUNTY PROCEEDING

In September 2010, after a tornado destroyed his pole barn, Keith Lenz, ("Lenz"), contracted with KBI to design, fabricate and construct a steel building. According to the terms of the contract, before KBI could commence construction, Lenz must prepare the jobsite within the next two weeks.

After eight (8) months of failing to prepare the jobsite, KBI notified Lenz that because of his breach of contract (failure to prepare the jobsite it was leaving the project.

Lenz filed suit against fictitious corporation "Kerr Building, Inc." [a non-legal entity] for Breach-of-Contract. Neither, KBI [Kerr Buildings, Inc.] nor Kerr were served notice of proceeding.

Judge Kelsey granted Lenz's motion for default judgment.

Afterwards, Lenz moved the court to pierce the corporate veil to seek damages against Kerr, individually. Judge Kelsey denied the motion by finding that Kerr must first be amended as a defendant. He then gave Lenz leave to amend his complaint.

Without filing either a Rule 59 or Rule 60 motion, Lenz filed his Amended Complaint which (1) retained original defendant, non-legal entity, "Kerr Building, Inc."; (2) added Kerr as a defendant; and, (3) added a new claim, "Officer's Liability for Corporate Action". Lenz then served Kerr at his residence.



Subsequently, Lenz sought and lost two motions for summary judgment against Kerr. However, during this proceeding, Lenz and his attorney, Edward Schimmel, filed a criminal complaint against Kerr in Ottawa County, Ohio, where Lenz resides.

The Ottawa County Prosecutor prosecuted Kerr for "Contractor Theft" through Ohio's common theft statute [Ohio Rev Code 2913.02]. The prosecutor offered to drop the charges if Kerr would return Lenz's down payment. Kerr refused and took the case to trial where he was found guilty because he did not return the down payment.

Following Kerr's conviction, Lenz sought another Summary Judgment in Wood County where he solely relied on Kerr's conviction. Judge Kelsey granted the motion.

#### HENRY COUNTY PROCEEDING

In 2010, Scott Bishop, ("Bishop"), contracted with KBI to design, fabricate, and construct a steel building. A contract dispute arose between the parties. Soon thereafter, KBI filed suit against Bishop, who in turn, filed suit against KBI and Kerr, individually.

Ultamatly, through fraud, Bishop obtained a judgment against KBI and Kerr. Bishop then filed a judgment lien against KBI and Kerr in Wood County, Ohio. However, neither KBI nor Kerr held any properties in Wood County.

Later, in a Debtor's Exam, Bishop gained knowledge that Kerr is the sole member of BCP and BCD, which owns several properties in Wood County.

On May 29, 2013, at 2:42 pm, Bishop filed his motion for charging order against Kerr's membership interest in BCP and BCD. Two minutes later, at 2:44 pm, Judge Collier issued a Charging Order

Order, composed by Bishop's attorney, Alan Lehenbauer, that permitted Bishop to sell the properties solely held by BCD.

None of the parties [KBI, Kerr, BCP nor BCD] were served notice of the proceeding, nor did they have an opportunity to present their objections. Further, neither BCP nor BCD are parties to the action. Furthermore, being a Delaware corporation, only a Delaware court may render a Charging order against Kerr's membership interest in BCP.

Afterwards, Judge Collier granted Bishop's Motion to Appoint a Receiver over KBI, Kerr, BCP, BCD and its properties, with the sole purpose of selling the properties held by BCD. Again, none of the parties were served notice. In addition, Judge Collier lacked personal jurisdiction over BCP and BCD.

During the Receivership, Judge Collier issued a Nunc Pro Tunc Charging Order that deleted the order to sell the properties. He also issued an Amended Order to Receiver that removed BCP, BCD and its properties from the receivership. However, the Receiver, attorney Christopher Frasor, refused to relinquish his control of BCP, BCD and its properties.

Kerr's son [Nick Kerr] and mother [Jeanett Payne] hired an attorney for Kerr. In retaliation, the Receiver filed a complaint against Nick Kerr and Jeanett Payne under the same case number which the court had already issued a judgment against KBI and Kerr.

Eventually, the Receiver sold the properties.

#### DISTRICT COURT PROCEEDING

In regards to the Henry County Proceeding, Kerr sought declaratory judgments stating that (1) the judgment against Kerr is

void because it was procured by fraud; (2) the Charging order is void because it was procured in violation of Kerr's procedural due process rights; (3) the Order Appointing Receiver is void because it was issued against non-party entities BCP and BCD; (4) the Nunc Pro Tunc Charging Order nullified the original Charging Order permitting the sale of the properties held by BCP and BCD; (5) the Amended Order to Receiver removed BCP, BCD and the properties from the receivership; (6) BCP's property at 1714 Marne Ave, Toledo, Ohio, which was not listed in the original Order Appointing Receiver, should not have been included as a receivership asset; and (7) the judgment rendered against Jeanett Payne and Nick Kerr is void for lack of subject matter jurisdiction.

In regards to the Wood County Proceeding, Kerr sought declaratory judgments stating that (8) the judgment against "Kerr Building, Inc" is ab initio for lack of subject matter jurisdiction because the action did not properly commence under Ohio Civ.R. 3(A); (9) the judgment is void ab initio because it was procured by fraud; and, (10) the judgment against Kerr is void ab initio for lack of subject matter jurisdiction because no Ohio Civ.R. 59 or 60 motion was filed prior to the filing of the Amended Complaint.

Kerr further asserted that (11) Bishop, Lenz and other defendants engaged in racketeering; (12) that Kerr had a property interest in the monies in the receivership estate prior to its distribution; (13) Receiver Frasor acted ultra vires by continuing his control of BCP and BCD after they were removed from the receivership estate; and, (14) Ohio Rev Code 2913.02 [Ohio's criminal theft statute] is unconstitutionally vague as applied in the context of a contract dispute.

Kerr also asserted that the defendants committed state law torts; (15) slander of title by filing a judgment lien in Wood County after Lenz's judgment against Kerr became dormant; (16) abuse of process by bringing suit against Jeanett Payne and Nicholas Kerr with ulterior motive of hindering their ability to assist Kerr in fighting the legality of the receivership estate; (18) fraud by filing false court documents; (19) conversion by exercising dominion over property that rightfully belongs to Kerr but was wrongly considered a receivership asset; (20) intentional infliction of emotional distress; (21) reckless, wanton and willful misconduct; (22) abuse of process by instigating the Ottawa County criminal action against Kerr; (23) negligence when Frasor breached his duty as receiver to release control of BCP and BCD; and, (24) Kerr sought a declaration that BCD was the rightful owner of the properties when Frasor sold them.

The District Court sua sponte dismissed Kerr's complaint by finding (1) Rooker-Feldman prohibits a federal district court from declaring a state court judgment void ab initio, and (2) that res judicata barres Kerr's claims because he "did or could have raised them" in state court.

Kerr filed a Rule 59(e) motion, as well as a Request to take Notice of Circuit Judge Sutton's advise in Vanderkodde, 951 F.3d 367 (6th Cir, 2020) where he fully explained why so many district courts erroneously apply Rooker-Feldman to properly presented federal issues. He suggested that, absent a plaintiff seeking a reversal or modification of the state court judgment, "a federal court tempted to dismiss a case under Rooker-Feldman should do one thing: Stop. If temptation lingers, the court should try something

else: Reconsider. And, if that does not work, the court should exercise jurisdiction anyway and ask the United States Supreme Court to reverse it." Id at 409.

Kerr also argued that the District Court lacked the ability to sua sponte apply res judicata, an affirmative defense reserved for the adverse party, after it had determined that Rooker-Feldman barres jurisdiction. Without jurisdiction, the court lacked the ability to determine whether res judicata is applicable.

The District Court denied the motion and found that an appeal could not be taken on good faith.

#### APPELLATE COURT PROCEEDING

Kerr filed his Notice of Appeal, along with a Motion to Proceed in Forma Pauperis.

Circuit Judge Readler denied Kerr's IFP motion by finding his appeal lacks an arguable basis in law. In support, Circuit Judge Readler held (1) that Rooker-Feldman applies because Kerr is a "state court loser" in judgments that were rendered before the district court proceeding commenced; (2) that res judicata applies because Kerr's claims "were or could have been raised" in prior litigation; (3) Kerr lacks standing on Claims 7 and 16 because he "cannot rest his claims to relief on the legal rights or interests of third parties"; (4) that Preiser v Rodriguez, 411 US 475, 488-90 (1973) barres Kerr's challenge to the constitutionality of Ohio's criminal theft statute; (5) that Heck v Humphrey, 512 US 477, 487 (1994) barres challenges to the instigation of the criminal action against Kerr until his convictions are reversed; and, (6) that Kerr's state law claims in Counts 20 and 21 are to conclusory to state a claim.

Kerr filed a Petition for En Bank Determination and Panel Decision where he argued that Circuit Judge Readler's Decision conflicts with decisions of the United States Supreme Court, as well as prior decisions of the Sixth Circuit, regarding Rooker-Feldman, in that, because Kerr's complaint is absent of any allegation that the merits of the state court judgments were wrongly decided; Rooker-Feldman cannot be applied.

Kerr also established that collateral attacks on state court judgments are permitted under federal law, with no interference from Rooker-Feldman, if the state law permits such attacks in the state court.

Kerr further established that, in Ohio, a collateral attack on a void judgment can never be barred by res judicata.

Lastly, Kerr established that once a court finds Rooker-Feldman barres jurisdiction, it is stripped the ability to determine whether res judicata is applicable or any other remaining issue. See Hutcherson v Lauderdale County, 326 F.3d 747, 755 (6th Cir, 2003) [The application of Rooker-Feldman strips federal courts of jurisdiction and ability to determine res judicata].

The Sixth Circuit denied Kerr's motion.

## 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 issue: The relationship between Rooker-Feldman and Collateral Attacks on void ab initio state court judgments. This calls for an exercise of this Court's supervisory power.

The Fifth Circuit had 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 Deutsche 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, neither the District Court nor the Sixth Circuit considered reviewing whether the state court judgments were void before applying Rooker-Feldman. Rather, they blindly applied

Rooker-Feldman with no regard whether its application would work an injustice, or whether its application would give a void judgment credit that the State would not give.

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 in order to determine whether the state court had jurisdiction. Is this not the process prescribed under the Full Faith and Credit Jurisprudence? Therefore, Rooker-Feldman cannot barre this type of review. And, further, before its application, the federal court must determine whether the state court had jurisdiction to render its judgment.

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 than 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...not more credit.

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 74 (1903) ["What effect a judgment of a state court has is a question of state law"].

Both, the District Court's Decision, as well as the Sixth Circuit's Decision, 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 jurisdiction, 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 addition, it should be noted that the Sixth Circuit's

interpretation of Rooker -Feldman is in conflict with the Fifth Circuit's interpretation, in that, the Sixth Circuit's Decision, as well as other Circuits, see Rooker-Feldman as an absolute prohibition from bringing any collateral attacks on a state court judgment. 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 if success of the federal claim would effectively 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 barres collateral attacks on void ab initio state court judgments. Those federal plaintiff's, just like Kerr, have a right to collaterally attack void state court judgments, and the federal courts have a corresponding duty to declare such judgments void.

This Court must exercise its supervisory power and provide guidance for the federal courts.

## 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. Rooker, 263 US 413 (1923)

The Decisions of, both, the District Court and the Sixth Circuit, conflicts with Rooker v Fidelity Trust, 263 US 413 (1923).

The District Court and the Sixth Circuit have wrongfully interpreted Rooker as an absolute barre forbidding a "state court loser" from bringing a collateral attack on a void ab initio state court judgment. This is not the lesson taught by this Court in Rooker. Petitioner will, now, explain the proper lesson.

In Rooker, the federal plaintiff brought a collateral attack on an alleged void state court judgment. This Court did not immediatly dismiss the action, but rather, made a determination on whether the state court judgment was, in fact, valid or void.

Only after making such determination, that the state court had jurisdiction to render its judgment, this Court then held that the district court had properly dismissed the case because "under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the [valid] judgment" for the errors complained. "To do so would be an exercise of appellate jurisdiction" when "the jurisdiction possessed by the district court is strictly original."

It is axiomatic, that had this Court determined the state court had issued its judgment without jurisdiction, this Court would have held that the district court had jurisdiction to declare the state court judgment void ab initio. Afterall, there are hundreds maybe thousands, of Pre-Rooker-Feldman cases where federal courts

have declared state court judgments void ab initio.

Thus, the proper lesson to be taken from Rooker, is this: When a "state court loser" brings a collateral attack on a alleged void ab initio state court judgment, the federal court must first determine whether the state court had jurisdiction to render its judgment. If the state court had jurisdiction, then 28 USC 1257 barres the action. On the other hand, if the state court lacked jurisdiction, then the district court has jurisdiction to declare the state court judgment void ab initio.

Therefore, before a federal court may apply Rooker-Feldman, it must first determine whether the state court had jurisdiction to render its judgment.

This Court must provide guidance on this issue.

B. Preisner, 411 US 475 (1973)

The Decision of the Sixth Circuit conflicts with Preisner v Rodriguez, 411 US 475 (1973).

The Sixth Circuit held that Preisner barres Kerr's challenge to the constitutionality of Ohio's criminal theft statute, ORC 2913.02. The Sixth Circuit is mistaken.

Preisner only barres section 1983 actions that are "within the core of habeas corpus"; that is, when a section 1983 plaintiff attacks the "very duration of their physical confinement itself" and "seeks either immediate release from that confinement or the shortening of its duration." Id @ 488-90.

Further, in applying Preisner, this Court held in Wilkinson v Dotson, 544 US 74 (2005), that a state prisoner, who is not seeking immediate or speedier release, can bring an action under section 1983

challenging parole procedures because a favorable judgment would not necessarily imply the invalidity of the conviction or sentence. Id @ 82.

Here, similar to Wilkinson, Kerr's complaint is not "within the core of habeas corpus". He does not attack his Ottawa County conviction, nor does he attack his confinement. Further, Kerr is not seeking immediate release nor the shortening of its duration.

Rather, Kerr seeks a determination on whether the statute is unconstitutional, in the context of a contract dispute, because such determination is a critical factor into whether (1) the civil judgment against him is void ab initio; and, (2) whether the defendants are liable for their wrongful acts in procuring such civil judgment.

More over, a favorable judgment, that the state court civil judgment is void ab initio and damages against the defendants, would not necessarily imply the invalidity of Kerr's conviction or sentence.

This Court must provide guidance on this issue.

C. Heck, 512 US 477 (1994)

The Decision of the Sixth Circuit conflicts with Heck v Humphrey, 512 US 477 (1994).

The Sixth Circuit held that Heck barres Kerr's challenge to the instigation of the criminal action against him until his convictions are reversed. The Sixth Circuit is mistaken.

In Note 7 of Heck, this Court made absolutely clear, that Heck only barres the "injury" of being convicted and sentenced.

Here, Kerr's complaint "does not encompass the 'injury' of being convicted and imprisoned." See, Heck, 486, Note 7. Rather, the "injuries" Kerr complains are the void ab initio state court civil judgments, and the Defendants bad behavior in procuring those judgments. Specifically, Lenz and Schimmel [knowing that they cannot win a civil judgment against Kerr] used their connections to instigate a criminal action against Kerr in Ottawa County, with the sole purpose of using the prosecutor as a "mafia-like debt collector" - pay up or suffer the consequences.

This Court must provide guidance on this issue.

D. Applying Res Judicata after Rooker-Feldman Determination

After wrongfully determining that Rooker-Feldman barred jurisdiction, both, the District Court and the Sixth Circuit, made additional determinations that res judicata was applicable.

It is legal common sense that once a court determines that it lacks jurisdiction, that court loses jurisdiction to make any further determinations. Thus, once the District Court determined that Rooker-Feldman barred the action, it lacked jurisdiction to make any further findings, such as whether res judicata was applicable.

This Court must provide guidance on this issue.

E. Standing

The Decision of the Sixth Circuit conflicts with Kowalski v Tesmer, 543 US 125, 129 (2004).

The Sixth Circuit held that Kerr lacked standing to litigate

claims 7 and 16. The Sixth Circuit is mistaken.

Kerr has standing to litigate whether a void ab initio judgment was rendered against another party when such finding would also render the judgment against him void ab initio. Thus, Kerr as a right and "the appropriate incentive to challenge" the void ab initio state court judgment rendered against his son and mother, or any other party. Further, Kerr's complaint clearly alleges these facts.

As a result, the Sixth Circuit's reliance on Kowalski and Whitmore v Arkansas, 495 US 149, 165 (1990) is misplaced because Kerr did not present these claims as a "next friend" to a party who waived their right to proceed.

This Court must provide guidance on this issue.

F. Ashcroft, 556 US 662 (2009)

The Decision of the Sixth Circuit conflicts with Ashcroft v Iqbal, 556 US 662, 678 (2009).

The Sixth Circuit held that Kerr's claims 20 and 21 are "too conclusory" to state a claim. The Sixth Circuit is mistaken.

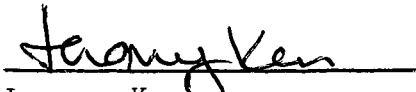
Kerr's complaint contains "sufficient factual matter" that is "merely consistent with" the Defendants' liabilities. In addition, the complaint also contains recitals of elements, which is irrelevant so long as the complaint contains "sufficient factual matter".

This Court must provide guidance on this matter.

# CONCLUSION

Because the Decision of the Sixth Circuit conflicts with Decisions of the Fifth Circuit, as well as this Court; and, because the Sixth Circuit decided important questions of law that have not been, but should be, settled by this Court, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

  
Jeremy Kerr