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No. 23-7720

IN THE

SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA, *PETITIONER PRO SE*

vs.

ASSOCIATION OF APARTMENT OWNERS OF THE TROPICS AT WAIKELE, BY ITS BOARD OF DIRECTORS, ET AL.,

RESPONDENTS.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to this Court's Rule 44.2, Petitioner Pro Se Patsy N. Sakuma, respectfully petitions for rehearing of this Court's October 7, 2024 order denying certiorari in this case.

GROUNDS FOR REHEARING

This case presents the two exceptionally situations of intervening circumstances involving two longstanding Circuit Court conflicts that arose after the writ of certiorari petition in this case was filed or alternatively, not previously presented. Sup. Ct. R. 44.2. One of the intervening circumstances of substantial effect or not previously presented is the opening of a circuit split with the Seventh Circuit on the issue of whether federal damage claims based on an injury inflicted by a state court judgment are outside *Rooker-Feldman's* bar, but excepting state foreclosures judgments from that rule.

The other is the opening of a new circuit split on the violations of statutory civil rights of a party causing injustice to the party and the risk to public confidence in the judicial process that arose when the Sixth Circuit decision *In re West* was published after the petition for writ of certiorari in this case was filed (, with the Sixth Circuit *In re West* (in 17 year of sentencing error of life-sentence without parole),70 F4th 341 (6th Cir. 2023) (on remand, Nos.23-1792; 2:06-cr-20185-1; 2:2:13-cv-14748); cert. denied, No,. 23-5698 2024 WL 75933(U,S, Feb, 26m 2024) and the Ninth Circuit in the present case, S.Ct. No. 23-7720 (violating jurisdictional civil rights 42 U.S.C. §§1985(2),(3) claims pursuant to 28 U.S,C. 1343(a)(1) & (2),

misapplying this Court's waiver rules in *Ackermann v. United States* and *Kemp v. United States,* and implied overturning of multi-factor excusable neglect test in *Pioneer Inv.Servs. v. Brunswick Assoc. Ltd. Ptshp.,* , and Ninth Circuit exception to waiver rule, *Eberle v. City of Anaheim*) on one side of the circuit split, and on the other side, the Second Circuit decision *Blom Bank, SAL v. Honickman,* S.Ct. No. 23-1259 that was granted certiorari the same day it was denied in this case, the Seventh Circuit in *Simpson v. Cnty of Brown,* 860 F3d 1001, **1007** (7th Cir. 2017)(sua sponte raising unlabeled *Monell* municipal liability claim on 3rd amended complaint drafted by counsel); and Ninth Circuit in *Brown v. Arizona,* 23 F4th 1173, 1181-1183 (9th Cir. 2023(dissenting 9th Cir. panel judge sua sponte raising waived, abandoned or disavowed Title IX control-over-the-context-liability argument/theory), and resulting favorable judgment on en banc review in *Brown v. Arizona,* 82 F4th 863 (9th Cir. 2024)(en banc) (concurrence and three dissents), cert. denied, S.Ct. No. 23-312.

I. THERE IS NOW AN OPEN CIRCUIT APPLY TO A FEDERAL CLAIM FOR DAMAGES BASED ON AN INJURY INFLICTED BY A STATE-COURT JUDGMENT (NOT SOUNDING IN MONETARY TERMS), AND EXCEPTING STATE FORECLOSURE ACTIONS.

1. One of important questions of federal law this case presents is a bright-line test on the *Rooker-Feldman* jurisdictional bar stated in the first question presented: whether federal defendants who were not a state party are also (sic) not subject to the *Rooker-Feldman* jurisdictional bar under *Lance v. Dennis,*546 U.S. 459, 466 (2006)(per curium). The *Rooker-Feldman* doctrine bars lower federal courts from hearing appeals of final state court judgments. *See, Rooker v. Fidelity Trust*

Co., 263 U.S 413 (1923) and *District of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). Only the United States Supreme Court has authorization to hear appeals of final state court judgments. 28 U.S.C. §1257. *Lance v. Dennis* stated the *Rooker-Feldman* doctrine does not bar action by nonparties to the earlier state court judgment simply because for purposes of preclusion they could be considered in privity with a party to the judgment. This Court in *Lance* cites authority to *Karcher v. May*, 484 U.S. 72, 77 (1987), Pet. at 1, 15, 18. *Karcher* held that a non-state party may not appeal a state court judgment. Therefore, *Lance's* premise that the federal plaintiffs who were not a state party in a similar state action where the state parties lost, however, are not "state losers" under the first test of the four-part test to determine if the *Rooker-Feldman* jurisdictional bar applies under this Court's decision *Exxon-Mobil* v. *Basis Saudi Indust., Inc.*.544 U.S. 280, 283, 291 (2005). Under *Karcher*, the federal district court had subject-matter jurisdiction since 28 U.S.C. §1257 is not implicated. Section 1257 only limits appellate review of final state court judgments to this Court, and not the lower federal courts. Pet.1, 15, 18.

2. When the certiorari petition in this case was filed the intervening new decision *Gilbank v. Wood County Dept. of Human Servs.*, 111 F.4th 754 (7th Cir. 2024)(en banc) was not yet decided. *Gilbank* was decided on August 7, 2024. Therefore, at the time the petition in this case was filed, however, there no square circuit conflict or concurrence with *Gilbank*. In *Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30, 34 n.1 (1929), the petition for writ of certiorari was filed before a conflicting Third Circuit decision had been handled down; and was latter denied."

But after the handling down of that opinion Court has previously granted rehearing where a circuit split emerged after a petition for writ of certiorari was filed. But after the handling down of that opinion showing the conflict was brought to the Court's attention by a petition for rehearing, the certiorari was granted.

3. *Gilbank* is an 80-page fragmented, en banc decision with two majority opinions, and concurrences, and one dissenting opinion. 111 F.4th at 760, 794. One of the majority opinions in *Gilbank* holda that *Rooker-Feldman* does not deprive federal courts of subject-matter jurisdiction to award damages from injury caused by a state court judgment not sounding in monetary terms. *Id.*

4. Judge Easterbrook concurs because "relief for damages do not modify the since resolved custody judgment, the custody proceedings have closed and *Gilbank* regained custody of her daughter, and are thus not a form of appellate review to undo that state court custody order. Therefore, the fourth element of *Exxon-Mobil's Rooker-Feldman* test of whether the federal action "invites review and rejection" of the state court judgment does not apply so there is federal subject-matter jurisdiction. (See, *Gilbank's* second majority opinion, including the portion of Judge Easterbrook's concurrence and joining in Part 1 of Judge Kirsch's concurrence, in part, operating as a majority opinion at 760, 794 & n.7 (J. Kirsch's reliance on the Second, Third, Fourth, Sixth, Tenth and Eleventh circuit court cases where damages requested went forward in federal court).

5. In *Gilbank*, the Seventh Circuit announced it now joins the Second, Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits following this rule. *Hohenberg*

v. Shelby Cnty 68 F4th336 (6th Cir. 2023); *Behr v. Campbell,* 8 F4th 1206 (11th Cir. 2021)(a request for damages for injuries caused by a state court's unconstitutional judgment does not ask a federal court to "review and "reject"that judgment); *Webb ex.rel K.S. v. Smith,* 936 F3d 808 (8th Cir. 2019); *Great Western Mining & Minerals Co. v. Fox Rothschild, LLP,* 615 F.3d 159 (3rd Cir. 2010); *Kovacic v. Cuyahoge County Dept. of Children & Family Servs.*, 606 F.3d 301 (6th Cir. 2010); *Green v. Mattingly,* 585 F.3d 97 (2d Cir. 2009); *Adkins v. Rumsfeld,* 464 F.3d 456 (4th Cir. 2006); *Mo's Express, LLC v. Sopkin,* 441 F.3d 1229 (10th Cir. 2006); *Holloway v. Brush,* 220 F.3d 767 (6th Cir. 2000)(en banc); *Ernst Child & Youth Servs. of Chester County*, 108 F.3d 486 (3rd Cir. 1997). 111 F4th at 828, n.7.

7. Judge Hamilton's dissent in *Gilbank* states the Judge Kirsch's bright-line test that money damages from a state judgment does not violate *Rooker-Feldman* in dicta states that because a state foreclosure judgment speaks in terms of monetary damages, a federal action claiming monetary damages from that state foreclosure judgment would violate *Rooker-Feldman.* This is because the fourth test in *Exxon Mobil* that the federal judgment would invite review and rejection of that state foreclosure judgment is met. *Gilbank,* 111 F. 4th at 773.

8. Petitioner Pro Se's alternative *Lance v. Dennis* holding, however, conflicts with this portion of *Gilbank's* holding or dicta that the relief of money damages that would be sought in a federal action based on fraud or any other independent claim where the state judgment sounds in monetary terms still would bar federal subject-matter jurisdiction under the *Rooker-Feldman* doctrine.

Petitioner Pro Se's position which is in accord with Ninth Circuit law on this issue--*Noel v. Hall's* focus on the appeal aspect of the judgment is based on **the same premise** as Karcher's statement of the general rule—a non-state party lacks standing to appeal. *Noel v Hall*, 341 F.3d 1149, 1154 (9th Cir. 2003): 9th Cir. *Rooker-Feldman's* step 1: Is the federal claim an appeal of the state court judgment; if no, then the inextricably intertwine test does not apply. Apparently, Judge Hamilton's view is interjecting *Feldman's* inextricable intertwine" language, under *Exxon-Mobil's* "review and reject,"which language all of the 7th Circuit judges, including Judge Hamilton agreed would not be relied on in *Gilbank*. 111 F.4th at 756,

10. The question presented in the in *Gutierrez v. Saenz*, S.Ct. Nos. 23-7809/23A1160, which was granted certiorari the same day denied in this case, illustrate why the logic in *Karcher v. May* to *Lance v. Dennis* works.

11. *Gutierrez v. Saenz,* was granted certiorari on the same day it was denied in the present case. The question presented there is whether the 5th Circuit's reverse logic of *Utah* v. *Evans,* 536 U.S.452 464 (2002) follow the holding of *Reed v. Goertz,* 143 S.Ct. 955 (2023). Unlike Dennis' alternative holding, the 5th Circuit's reverse logic of *Utah v. Evans* to *Reed* to Gutierrez, seems a wrong assumption.

12, Gutierrez's attorneys simply could just cite another case with a different statistical report to support the reverse logic. E.g., *Federal Election Comm'n. v. Akins*, 524 U.S. 11, 25 (1988). Alternatively, if *Utah* applies, it appears the 5th Cir. is offensively using *Rooker-Feldman* claims to Reed's Article III

standing test, in a balancing test that Justice Thomas advocated in his dissent in *Reed.* However, the majority rejected Justice Thomas' approach in *Reed.*

II. THERE IS A NEW CIRCUIT SPLIT FOR THE VIOLATIONS OF STATUTORY LAW, AND IT IS AN EXCEPTIONAL CIRCUMSTANCE ASNDNDFOR RULE 60(B)(6) RELIEF

The development of a circuit split over violations of federal statutory rights by government employees involved in a federal lawsuit causing not only injustice to the moving party, but the risk to "public confidence in the judicial process," presents a compelling case for certiorari. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1998); *see also, Sanitary Refrigerator Co.*, 280 U.S,. at 34 n.1.

Forming one side of this new circuit split is the Sixth Circuit *In re West,* and proposed Ninth Circuit in the present action by adding the new ground for exceptional-circumstances under Rule 60(b)(6) here based on seven (7) years trying to obtain a hearing on the merits of her jurisdictional civil rights claims, 42 U.S.C. §§1985(2),(3) and 28 U.S.C. §§1343(a),(1), (2). Sections 1985(2),(3) are jurisdictional by virtue of their special jurisdictional section 28 U.S.C. 1343(a)(1), *see, Douglas v. City of Jeannette,* 319 U.S. 157, 161(1943)(42 USC 1983 and 28 USC 1343(a)(3) are worded differently, but treated identically); *Lynch v. Household Finance Corp.*, 465 U.S. 538, 543 & n.7 (1972)(same). Exceptional Circumstances here exists in:

(1) The First Ninth Circuit Panel not sua sponte raising these civil right claims after actual notice on direct appeal in her rehearing en banc petitions based on misapplying this Court's waiver standard under *Ackermann,* and excusable neglect under *Pioneer,* and the Clerk of the 9th Cir. not docketing her multiple

timely received briefs contemporaneously but filing her original timely received petition last thus preventing her timely notice she needed to file a motion for leave except for the original one docketed last. *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 267 n.4 (2010), Pet. 7-8; 27-28;

(2) Denying her 2016 appeal based on waiver because she had cited other authority rather than *Eberle v. City. Of Anaheim,* 901 F.2d 914, 918 (9th Cir. 1990)(no waiver if defendants-appellees argue waived contentions in responsive brief) yet, the First Ninth Circuit panel's failure to cite any authority in its May 1, 2018 Order to deny her 2017 rehearing en banc petition, Pet,.at 9, Pet. App. 28-29a;

(3) Denying her Second Appeal by misapplying *Ackermann's* waiver standard resulting in their failure to exercise Congress' mandate by denying her §1985 claims based on her deliberate litigation mistake; Pet. 11.

(4) Losing, misplacing or not docketing her originally filed 2023 Reply Brief to Respondent Commissioner's responsive brief causing her unnecessary costs, time and expenses to file replacement reply briefs. Pet. 15.;

(5) Again, applying waiver on appeal which the Ninth Circuit's Informal Reply Brief form appear to reject and presumably requiring she cite *Eberle* again, Pet. App. 3-4c; yet in in *Brown v. Arizona,* 23 F4th 1173, 1181, 1183 (9th Cir. 2024) allowing the dissenting panel judge to sua sponte raised the waived and disavowed Title IX theory of-control-over-the-context-of the abuse, without citing any authority, and resulting in the concurring en banc judge, attempting to explain it but also without any cited authority, and two dissenting en banc judges

disagreeing with the "no cited authority" for it, 82 F.4th 863,873 (9th Cir. 2024); concr., J. Friedland, *id.* at 884; dissent, J. Rawlinson, *id.* at 893; dissent, Nelson, *id.* at 894-895; Pet. at 16.

(6) The Third Ninth Circuit Panel's refusal to apply its new waiver rule in *Brown v. Arizona* ,82 F.4th 863,873 (9th Cir. 2024) after Petitioner Pro Se requested, to her rehearing en banc petition because Brown evidenced the Ninth Circuit had already rebooting its "waiver" standard to conform with *Kemp v. United States,* 596 U.S. 528, 533 (2022), Pet. at 16, as Petitioner Pro Se argued should be done in her 2022 Rule 60(b)(1), (3) motions, her Third Appeal, and in her 2024 rehearing en banc petition and that Kemp now effectively overturned Ninth circuit law *Engleson v. Burlington N.R. Co.*, 972 F2d 1038, 1043-44 (9th Cir. 1992(no relief from deliberate litigation action of amending complaint out of time and not appealing, and then seeking relief from judgment to correct pleading the wrong jurisdictional section) under *Martella v. Marine Cooks & Stewards Union,* 446 F.2d 729, 730 (9th Cir. 1971)(per curiam)(properly applying *Ackermann waiver;*

(7) And in this rehearing petition that the Ninth Circuit had separately concluded that *Kemp* overturned *Pioneer Invs. Servs. v. Brunswick Assocs. Ltd., Ptshp.*, 507 U.S. 380, 393 (1993) and signaled a return to its original rule pursuant to Justice O'Connor's dissent, *id. at* 399-400, because the Court has such prerogative, *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)(the authority to disregard or renounce controlling Supreme Court decisions is the sole prerogative of this Court); 28 U.S.C. §§2071, 2072.

(8) But the Court and circuit court's silence is causing injustice to Petitioner Pro Se and the erosion of the public's confidence in the judicial process, including unnecessary time, expense and energy (hacker added:to play professional football) if reversed waiver standard not applied to this case, as requested;

(9) The Ninth Circuit goes both ways, *Latshaw v. Trainer Wortham & Co.*, 452 F3d 1097, 1102-04 (9th Cir. 2006)*(misapplying Ackermann's waiver for relief from a settlement based on fraud); contra, U.S. v. Sparks,* 685 F2d 1128, 1130 (9th Cir. 1982)(citing *Ackermann* to grant Rule 60(b)(6) relief to undo settlement procured by fraud)*; cf,* Petitioner Blom Bank's Petition for Writ of Cert.,., *Blom Bank, SAL v. Honickman,* S.Ct. No. 23-1259, that the 9th Ciruit is part of the wall of 11 Circuit's applying Ackermann's, Pioneer's strict waiver rule), accepted for certiorari review the same day it was denied in this case;

(10) The Seventh Circuit in *Simpson v. Cnty of Brown,* 860 F3d 1001, **1007** (7th Cir. 2017)(sua sponte raising unlabeled *Monell* municipal liability claim on 3rd amended complaint drafted by counsel);

(11) The logical inference in *Gonzales* and *Ackermann's* holding of deliberate litigation choice to bar Rule 60(b)(6) relief is limited to the deliberate choice.of **not appealing** and then requesting relief based on an intervening change of law. *Kemp,* 596 U.S. 528, 533 (2022); *Liljeberg* cites *Ackermann's* but does not follow its mode of analysis. This Court in Liljeberg is using Rule 60(b)(6) to grant Rule 60(b)(6) relief for presiding judge's violation of federal ethics statute of recusal and because of his diligence in appealing. The circumstance beyond Liljeberg's

control was the presiding judge's failure to recuse himself to avoid the appearance of a conflict of interest. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1998)(citing *Klapprott v. United States*, 335 U.S. 601, 613-14 (1949) to contrast the prisoner *Klapprott* lack of freedom and poor health and circumstances are factors to balance under *Ackermann's* strict deliberate litigation choice for Rule 60(b)(6) relief.

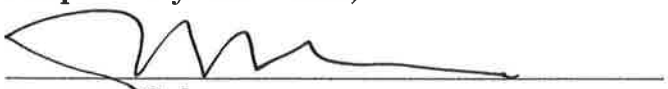
IV. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE THE CONFLICTS

This case is the most suitable for resolving these conflicts. Additionally, Petitioner Pro Se's motions for relief were all timely filed meeting both Rule 60(b)(1)'s one-year deadline and Rule 60(b)(6)'s reasonable-time deadline. This case, therefore, is an ideal vehicle for resolving these conflicts.

V. CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,



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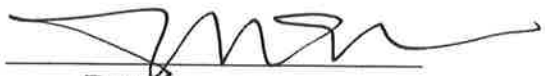
October 30, 2024

CERTIFICATE OF PETITIONER PRO SE

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.



Patsy N. Sakuma

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IN THE

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PATSY N. SAKUMA, *Petitioner Pro Se,*

vs.

ASSOCIATION OF APARTMENT OWNERS OF THE TROPICS AT WAIKELE, BY ITS BOARD OF DIRECTORS, ET AL.,

Respondents.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(b), I, Patsy N. SAKUMA, Petitioner Pro Se, certify the petition for a writ of certiorari contains 2923 words excluding the parts of the petition for rehearing that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury the foregoing is true and correct.

This 30th day of October, 2024

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