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24-190

No. _____

In the Supreme Court of the United States

TERRI L. STILES AND AHMAD ALKAYALI,

Petitioners,

v.

JOHN CLIFFORD, STEVEN SMITH, DARREN
RUDE AND DAVID R. CHAFFEE,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under the *Rooker-Feldman* doctrine, a federal district court lacks subject matter jurisdiction over appeals from state court judgments. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). However, the *Rooker-Feldman* doctrine does not extend to claims of “extrinsic fraud on a state court,” that is, claims that an “adverse party” perpetrated an “illegal act or omission” to fraudulently obtain the “state court judgment.” *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Collagen inventor, Ahmad Alkayali, sued Neocell Corporation and his former business partners after they dissolved his 72% equity share in the collagen supplement factory, Healthwise, without informing him or providing compensation. The jury awarded Alkayali damages and punitive damages. **The California Court of Appeal unanimously upheld the jury verdict, affirming that the actions of Neocell and his former business partners were unjust and malicious and confirmed his 72% ownership of Neocell.** *Alkayali v. Boukhari*, No. E066230, 2019 WL 1499478 (Cal. Ct. App. April 5, 2019) (*the “Healthwise Action”*).

Subsequently, in 2022, Petitioners filed a claim for damages under 42 U.S.C. § 1983 for due process violations in the taking of Petitioners’ property, their 72% ownership of Neocell, under color of state law and for a permanent injunction that remains in effect today prohibiting Alkayali from engaging in commerce in the nutritional health supplement field *forever*. To this day, Costco refuses to carry any of Mr. Alkayali’s products aware of the permanent injunction.

The Ninth Circuit Court of Appeals held that the district court properly dismissed Petitioners' First Amended Complaint ("FAC") for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine and the applicable statute of limitations. See *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482–86 (1983). The Ninth Circuit concluded that the FAC is a *de facto* appeal of a state court's "multiple rulings" that Petitioners "have no ownership interest in Neocell", referring to *Quadri v. Alkayali*, No. G042758, 2011 WL 810327 (Cal. Ct. App. Mar. 9, 2011), and the denial of their Motion to Set Aside in *Quadri v. Alkayali*, No. G054914, 2018 WL 1870732, at *1 (Cal. Ct. App. April 19, 2018).

The questions presented are:

1. Whether a court may selectively apply the *Rooker-Feldman* doctrine to preclude federal subject matter jurisdiction by excluding from consideration a jury verdict that found wrongful conduct by the adverse parties, relevant to the issue of extrinsic fraud in the state court action.
2. Whether a permanent injunction prohibiting an individual from forever engaging in commerce in his chosen occupation is facially unconstitutional and a continuing injury.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Terri L. Stiles and Ahmad Alkayali respectfully petition this Court for a Writ of Certiorari to review the Ninth Circuit Court of Appeals' decision.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals is reported not published. (PET000021). The opinion of the district court is not published. (PET000017 – 18).

JURISDICTION AND PROCEDURAL HISTORY

This case was brought under 42 U.S.C. § 1983 and the Fourteenth Amendment. The Courts below have jurisdiction pursuant to 28 U.S.C. § 1201, 1331 and 1343. The Supreme Court has jurisdiction over Lower courts under USC Title 28. Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

Petitioners Stiles and Alkayali filed suit as Plaintiffs *in pro per* against Respondents and others on March 24, 2022. (PET000917). The First Amended Complaint (“FAC”) was filed May 2, 2022. (PET000904). On May 18, 2022, Respondents, Clifford, Smith and Rude, filed a Motion to dismiss the FAC. On May 20, 2022, Defendants, Fatma Boukhari and Sarah Quadri, filed a Motion to Dismiss the FAC. On May 23, 2022, Respondent, retired Orange County Superior Court Judge Chaffee, filed a Motion to Dismiss the FAC. On September 1, 2022, the Magistrate Judge recommended that the Motions to Dismiss be granted and the FAC be dismissed without leave to

amend for lack of jurisdiction under Rooker-Feldman and the applicable statute of limitations. On September 15, 2022, Petitioners filed Objections to the Magistrate's Report and Recommendations. On September 22, 2022, the District Court accepted the recommendations of the Magistrate and entered judgment dismissing the FAC with prejudice.

On October 4, 2022, Respondents, Clifford, Smith and Rude, filed a Motion for Sanctions under Federal Rules of Civil Procedure 11. On October 10, 2022, Defendants Boukhari and Fatma filed a Motion for Attorneys' Fees. On December 12, 2022, the Magistrate issued a Report and Recommendation denying Defendants Smith, Clifford, and Rude's motion for sanctions and denying Defendants Boukhari and Quadri's motion for attorneys' fees. On January 18, 2023, the district court ordered the Motions for sanctions and attorneys' fees be denied.

On October 25, 2022, Petitioners filed a Notice of Appeal with the Ninth Circuit Court of Appeals. After briefing, the Ninth Circuit refused oral argument and on December 11, 2023 affirmed the judgement entered by the U.S. District Court. (PET000019 – 21.)

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

FEDERAL STATUTE INVOLVED

42 U.S.C. § 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States or other person 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...

STATEMENT OF THE CASE

It is a fundamental principle of our representative democracy, embodied in the U.S. Constitution's Fourteenth Amendment that any person shall not be deprived of "life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A. The FAC Alleges that the Judgment in *Neocell Action* Was Procured by Extrinsic Fraud

In their FAC, Petitioners Alkayali and his wife, Terri Stiles, sought damages for due process violations under 42 U.S.C. § 1983 for the taking under color of California State law their property rights, a 72% ownership interest in Neocell, a collagen supplement company, that Petitioner Alkayali founded and was the Chief Executive Officer. Mr. Alkayali invented collagen nutritional supplements, a breakthrough in skin longevity. This case is about Respondents' use of judicial deception and extrinsic fraud to deprive Petitioners of Mr. Alkayali's innovations and the company he built, Neocell, to obtain a judgment against him

that he no longer owned the company, notwithstanding that he was always a 72% owner. PET000907 – 909, PET000914. Respondents violated Petitioners' constitutional rights, deprived them of their property rights, due process and equal protection, under color of law.

On October 8, 2008, Alkayali was scheduled to fly to London for a business trip. But that morning Quadri and three lawyers from the Smith, Chapman firm, including Appellees Clifford and Smith, orchestrated a fraud. PET000907. They surrounded Alkayali at the Neocell/HealthWise facility, gave him a letter informing him that he had been fired, and demanded that he leave the premises immediately. PET000907. Further, on October 28, 2008, Defendant attorneys, Smith and Clifford, took the outrageous measure of trespassing onto NeoCell property into Alkayali's office personally serving the Ex Parte Application for Temporary Restraining Order on Alkayali at NeoCell, and under color of state law, demanded Alkayali leave his own office, misrepresenting their authority that they had a court order to do so, acting under color of state law. PET000907.

B. The Ninth Circuit Erroneously Applied *Rooker-Feldman*

Nonetheless, the Ninth Circuit erroneously applied the *Rooker-Feldman* doctrine and disregarded the extrinsic fraud exception despite Petitioners' facially plausible claim to support a § 1983 claim in the FAC.

The Ninth Circuit stated the extrinsic fraud exception does not apply where it is alleged that "the state court judge erred in his handling of the state court proceedings."

The Ninth Circuit further stated:

For Appellants to receive damages, the district court would need to overturn a state court decision twice reviewed by the California Court of Appeal. The FAC is therefore a *de facto* appeal of the state court's multiple rulings that Appellants lack an ownership interest in the disputed Neocell Corporation. See *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (holding that a *de facto* appeal exists where the federal claims are "inextricably intertwined" with the state court ruling).

Thus, the Ninth Circuit concluded that Petitioners' unsuccessful appeal of the *Neocell Action* in *Quadri v. Alkali*, No. G042758, 2011 WL 810327 (Cal. Ct. App. Mar. 9, 2011), and the denial of their Motion to Set Aside in *Quadri v. Alkali*, No. G054914, 2018 WL 1870732, at *1 (Cal. Ct. App. April 19, 2018), supported the conclusion of no extrinsic fraud.

C. The Ninth Circuit Completely Disregarded the Jury Verdict in the Healthwise Action

The Ninth Circuit, however, completely disregarded the jury verdict affirmed on appeal in the *Healthwise Action* in which Petitioners' 72% ownership of Neocell was confirmed. In a lawsuit in California's Riverside County Superior Court, the company's officers were accused of conspiring to dissolve Alkayali's majority shares in the manufacturing arm of the Irvine-based collagen supplement company, Healthwise. The jury awarded Alkayali \$4.26 million in damages and punitive damages relating to claims for conversion and breach of fiduciary duty, among others. The California Court of Appeal unanimously upheld this verdict, and affirmed that the actions of Neocell and his former partners were unjust and malicious.

The three key points the Court of Appeals made in the *Healthwise Action* were: (1) Healthwise was a wholly owned subsidiary of Neocell, which the Quadris admitted; (2) Alkayali was a 72 % shareholder of Healthwise, and therefore, also a 72 % owner of Neocell; and (3) the Quadris were found liable for malicious, willful, and fraudulent conduct. *Id.*

The Ninth Circuit offered no explanation why it chose to disregard the most recent California Court of Appeal case affirming the jury's decision of the Riverside Superior Court that Petitioners' former business partners were liable for malicious and willful fraud in stealing Healthwise (the manufacturing arm of Neocell situated at the same physical location as Neocell) from Petitioners, who were also determined to be 72% majority shareholders of Neocell. PET000905, O; see *Alkayali v. Boukhari*, 2019 WL 1499478, at *11; affirmed on appeal.

Petitioners posit that the flawed *Neocell Action* was effectively reversed in the *Healthwise Action*. PET000905, PET000907. The Ninth Circuit provided no reasoned analysis why it chose to rely on the antiquated facts and conclusions of law of the *Neocell Action* as persuasive authority, particularly to the exclusion of the decision in the *Healthwise Action* in which Appellants were recognized as 72% majority shareholders of the company.

The extrinsic fraud exception to the *Rooker-Feldman* doctrine should apply to permit Petitioners to prosecute their 42 U.S.C. § 1983 claim because the jury verdict in the *Healthwise Action* shows the illegal and fraudulent conduct of the Respondents in obtaining the adverse judgment against Petitioners in the *Neocell Action*.

D. The Permanent Injunction is facially Unconstitutional and a Continuing Injury

The Ninth Circuit also found that the action is time-barred, however, Petitioners urge the Supreme Court to adhere to *Flynt v. Shimazu*, 940 F.3d 457 (9th Cir. 2019), detailed further herein, given Mr. Alkayali's continued inability to engage in commerce and investment opportunities in his career of choice due to the daily enforcement of a harsh court imposed permanent injunction against him.

The U.S. Supreme Court should grant the petition and reverse the Ninth Circuit's ruling and allow the case to proceed.

REASONS FOR GRANTING THE WRIT

A. The *Rooker-Feldman* Doctrine Does Not Apply Because Petitioners Are Not “State Court Losers” and Alleged In The FAC That Respondents Acted Illegally in Procuring the Judgment in the *Neocell* Action

The *Rooker-Feldman* doctrine “bars ‘state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced’ from asking district courts to review and reject those judgments.” *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed.2d 454 (2005)). An affirmative independent legal wrong asserted against a party involved in the state court action in a subsequent federal action is not barred under *Noel v. Hall*, 341 F.3d at 1164.

Furthermore, *Rooker-Feldman*, however, does not bar a federal suit to set aside a state court judgment if that judgment was obtained by extrinsic fraud. *Kougasian*, 359 F.3d at 1141. A plaintiff successfully alleges extrinsic fraud when he details how an adverse party, rather than a court, committed “an allegedly illegal act or omission” that prevented him from presenting his claim. *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003). Thus, while *Rooker-Feldman* bars allegations that a state court erred, it does not bar jurisdiction where an adverse party acted illegally. *Id.*

Notably, in *Kougasian*, 359 F.3d at 1140, the Ninth Circuit held that *Rooker-Feldman* doctrine did not apply where plaintiff sought relief from a state court judgment based on extrinsic fraud by her adversaries in those proceedings. *Id.* The court reasoned that “[e]xtrinsic fraud on a court is, by definition, not an error by [the state] court.” *Id.* at 1141. Similarly in *Noel*, the Court held that the *Rooker-Feldman* doctrine did not bar the plaintiff’s claims alleging that his adversaries in the state court proceedings illegally wire-tapped him because the “plaintiff assert[ed] as a legal wrong an allegedly illegal act or omission by an adverse party.” *Noel v. Hall*, 341 F.3d at 1164.

Here, Petitioners are not “state court losers,” and they allege extrinsic fraud by Respondents in procuring the judgment in the *Neocell Action*. Such a claim does not challenge the state court decision directly. See *Kougasian*, 359 F.3d at 1140–41. Petitioners allege in their FAC that Respondents violated their due process rights and deprived them of their property rights under color of law, their 72 % ownership of Neocell. Respondents illegal acts set forth in the Petitioners’ FAC follow.

1. The *Neocell Action* Falsely Alleged the Quadris Owned 100% Of Neocell

On October 28, 2008, the Neocell Action was filed against the Petitioners alleging that the Quadris owned 100% of Neocell. PET000906 – 907. That action sought a declaratory judgment of the Quadris' alleged 100% ownership of Neocell, as well as injunctive relief and damages (although the claim for damages was dropped at the beginning of trial). The Quadris sought a preliminary and permanent injunction against Petitioners. PET000081 – 86.

2. Respondents Physically Removed Alkayali from Neocell

Once Mr. Alkayali was physically removed from Neocell, Respondents did the following to adversely affect the outcome of the *Neocell Action* in favor of Respondents: (1) entered Mr. Alkayali's office at Neocell and destroyed, manipulated and fabricated documentary evidence used against Petitioners in the *Neocell Action*; (2) obtained an injunction that prohibited Alkayali from speaking to witnesses (his own employees); and (3) falsely and maliciously ensured that no third-party witnesses were available at trial. Thus, extrinsic fraud infected the (1) the TRO application; (2) the request for preliminary injunction; and (3) trial.

3. Nominal Respondent Chaffee Granted A Preliminary Injunction Imposing Restrictions On Mr. Alkayali Such That He Was Prevented From Fairly Defending Himself

On November 21, 2008, Appellee, David R. Chaffee, the former trial judge who presided over the Neocell Action, issued a preliminary injunction, which not only excluded Alkayali (the acting Chief Executive Of-

ficer) from the Neocell premises (Mr. Alkayali's own company), but also imposed additional restrictions, including the following:

1. Trespassing on Neocell's land or property and entering Neocell's offices located at 1911 and 1915 South Susan, Santa Ana, California;
2. Contacting (by telephone, mail, email, in person or otherwise) anyone at Neocell's offices, and/or any of Neocell's employees, customers, vendors, or affiliates without the express written consent of Neocell;
3. Coming within 500 feet of Neocell's offices; and
4. Removing, transferring, or otherwise disposing of, concealing, or encumbering any of Neocell's property, books or records.

4. Respondent Chaffee Declared A Mistrial Because The Jury Correctly Found That The Alkayalis Were 72 % Owners

After several continuances, the case went to trial on May 19, 2009. Notwithstanding these obstacles, the jury, by a vote of six to three, still determined that the Alkayalis were the 72% owners of Neocell, while the Quadris were only owners of 28% of the company. PET000911. This was also evidenced in tax returns viewed by Defendant Chaffee in chambers, but inexplicably withheld from the record. PET000907 – 908, PET000910.

5. The Neocell Action Was So Infected By Extrinsic Fraud That Appellee Chaffee Himself Ignored All Of The Evidence And Declared The Quadris To Be 100 % Owners of Neocell

Despite the factual issue as to ownership, Appellee Chaffee, concluded that the case was one in equity, only, and then proceeded to orally set forth his own determination that the Quadris were the 100% owners of Neocell by declaring a mistrial by the jury. PET000911 – 912. On July 29, 2009, Defendant Chaffee signed the proposed statement of decision drafted by Defendants, and subsequently entered a judgment, with a permanent injunction in favor of the Quadris and

against the Alkayalis, ignoring objections to the proposed final judgment and permanent injunction. PET000258 – 266.

B. A Permanent Injunction Remains in Effect To This Day

An injunction remains in effect to this day prohibiting Mr. Alkayali from contacting nutritional supplement retailers, his field of business, effectively eliminating Petitioners' ability to earn a living, continuing to injure them daily. PET000912. The statute of limitations has not commenced running because Respondents' conduct in violating Petitioners' constitutional rights constitutes a continuing irreparable injury because the State of California is enforcing a Court Order against Petitioners' daily. See e.g., *Flynt v. Shimazu*, 940 F.3d at 462 ["a new claim arises (and a new limitations period commences) with each new injury."]

In *Flynt*, in a licensees' 42 U.S.C. § 1983 action against the Bureau of Gambling Control and others,

alleging that California Business and Professions Code sections 19858 and 19858.5 were facially unconstitutional under the Dormant Commerce Clause, the Ninth Circuit held that the district court erred in finding the action time-barred (because the claims were subject to a two-year statute of limitations under California Code of Civil Procedure section 335.1), and the State's continued enforcement of §§ 19858 and 19858.5 inflicted a continuing harm on the licensees relating to investment opportunities. Similarly here, the State is continuing to enforce a permanent injunction preventing Petitioners from earning a living. This is an interference with Petitioners' civil liberties.

CONCLUSION

For the reasons discussed, Petitioners respectfully request that the Petition for Writ of Certiorari be granted.

Respectfully submitted,



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