

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

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ANNA GRISTINA

Petitioner  
vs.

Juan Merchan, New York State Judge, in an official capacity, *et al.*,

Respondents

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

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. Whether the *Younger* abstention doctrine requires a federal court to abstain from a state court civil proceeding (where a party seeks to pay for, and obtain, transcripts from their closed criminal case), on the grounds that any such state court civil proceedings, is “uniquely in furtherance of the state courts’ ability to perform their judicial functions.”
- II. Whether the *Younger* abstention doctrine applies when state court proceedings are no longer pending.
- III.A. Whether the *Rooker-Feldman* doctrine barred the District Court from hearing Petitioner Gristina’s constitutional claims – involving access to the transcripts in her closed criminal case – when a state court appeal was still pending involving Judge Merchan’s Order.
- III.B. Whether the *Rooker-Feldman* doctrine barred the District Court from hearing Petitioner Gristina’s constitutional claims – involving access to the transcripts in her closed criminal case – when Judge Merchan’s Order was not the cause of the Petitioner’s injury.

## LIST OF ALL PARTIES

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

1. Juan Merchan, New York State Judge, in an official capacity, and
2. Alvin Bragg, New York County District Attorney, in an official capacity.

## RELATED CASES

- *Gristina v. Merchan*, No. 22-1114, U. S. Court of Appeals for the Second Circuit. Judgment entered 12 March 2025
- *Gristina v. Merchan*, No. 21-cv-08608, U.S. District Court for the Southern District of New York. Judgment entered 20 May 2022
- *Matter of Gristina v. Merchan*, No. 2022- 214, State of New York, Court of Appeals. Judgment entered 16 June 2022
- *Matter of Gristina v. Merchan*, No. 2021-01469, Supreme Court of the State of New York, Appellate Division, First Judicial Department. Judgment entered 14 October 2021.
- *The People of the State of New York v. Anna Gristina*, Indictment Number 00751-2012, Supreme Court of the State of New York, New York County, Criminal Term. Judgment entered 20 November 2012.

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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 judgment below.

**OPINIONS BELOW**

**For cases from federal courts**

The Opinion of the United States Court of Appeals for the Second Circuit appears at Appendix A to the petition and is published at 131 F.4th 82.

The Opinion of the United States District Court for the Southern District of New York appears at Appendix C to the petition and is unpublished.

The Order of the United States Court of Appeals for the Second Circuit appears at Appendix D to the petition and is unpublished.

**For cases from state courts**

The Order of the State of New York, Court of Appeals appears at Appendix E to the petition and is published at 192 N.E.3d 342, 38 N.Y.3d 910.

The Order of the Supreme Court of the State of New York, Appellate Division, First Judicial Department appears at Appendix F and is unpublished.

The Decision and Order of the Supreme Court of the State of New York, Appellate Division, First Judicial Department appears at Appendix G and is published at 152 N.Y.S.3d 584 (Mem), 198 A.D.3d 478.

The Decision and Order of the Supreme Court of the State of New York, New York

County, Criminal Term appears at Appendix H and is unpublished.

## **JURISDICTION**

The Second Circuit entered its' judgment on 12 March 2025. A timely petition for rehearing; or, in the alternative, for rehearing *en banc* was denied by the Second Circuit on 21 April 2025, and a copy of the order denying the petition appears at Appendix D. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. CONST. amend. XIV § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **N.Y. C.P.L.R. LAW § 7801**

Relief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article. Wherever in any statute reference is made to a writ or order of certiorari, mandamus or prohibition, such reference shall, so far as applicable, be deemed to refer to the proceeding authorized by this article. Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination:

1. which is not final or can be adequately reviewed by appeal to a court or to

some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless the determination to be reviewed was made upon a rehearing, or a rehearing has been denied, or the time within which the petitioner can procure a rehearing has elapsed; or

2. which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court.

#### **N.Y. C.P.L.R. LAW § 7803**

The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.
5. A proceeding to review the final determination or order of the state review officer pursuant to subdivision three of section forty-four hundred four of the

education law shall be brought pursuant to article four of this chapter and such subdivision; provided, however, that the provisions of this article shall not apply to any proceeding commenced on or after the effective date of this subdivision.

#### **N.Y. JUD. LAW § 300**

The stenographer shall, upon the payment of his fees allowed by law therefor, furnish a certified transcript of the whole or any part of his minutes, in any case reported by him, to any party to the action requiring the same.

#### **STATEMENT OF THE CASE**

[T]he rule is that “the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction....’ (*citations omitted*).... This difference in general approach between state-federal concurrent jurisdiction and wholly federal concurrent jurisdiction stems from the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 1246 (1976).

In Colorado River the Court also made the following statement: “*Given this obligation, and the absence of weightier considerations of constitutional adjudication and state-federal relations, the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for*

*abstention. The former circumstances, though exceptional, do nevertheless exist. Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818, 96 S. Ct. 1236, 1246 (1976).

In this case, there was no exceptional circumstance that precluded the federal court from exercising the Court's jurisdiction. The state court proceeding was not a pending civil proceeding "uniquely in furtherance of the state court's ability to perform their judicial functions." *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 73, 134 S. Ct. 584, 588 (2013) The Second Circuit's "rule," as articulated in their Opinion at Appendix A. App. 1, incorrectly interprets the Court's rule (in effect, it swallows the Court's rule), and limits the ability of federal courts to exercise the jurisdiction given to them.

Petitioner Anna Gristina was indicted (along with another Defendant), and charged with one count of Promoting Prostitution in the Third Degree under Indictment Number 00751-2012. N.Y. PENAL LAW § 230.25 (1). The Petitioner, and the co-defendant, were arraigned on the indictment in the Supreme Court of the State of New York, New York County Criminal Term, before Judge Merchan. Appendix K, App. 076. Petitioner Gristina, and the co-defendant, were charged under a theory of accessory liability. "When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct." N.Y. PENAL LAW § 20.00. The criminal court (Judge Merchan),

indictment was never severed the indictment joining Petitioner Gristina and the co-defendant. N.Y. CRIM. PROC. LAW §200.40(1).

Indictment Number 00751-2012 was calendared before Judge Merchan on 13 August 2012, and 16 August 2012. On 25 September 2012, Petitioner Gristina entered a plea of guilty. Appendix J. App. 75. Judgment was entered on 20 November 2012. Appendix J. App. 75. A Notice of Appeal was not filed in the criminal case. N.Y. CRIM. PROC. LAW § 460.10(1)(a).

In 2021, Petitioner Gristina filed a motion before Judge Merchan to unseal the minutes in her criminal case, so that she could make a motion to vacate the judgement in her case pursuant to N.Y. CRIM. PROC. LAW § 440.10 (1). U.S. CONST. amend. XIV § 1. *See* Circuit Court Joint Appendix (*hereafter referred to as JA*) at p. A86, ¶ 6, JA at p. A88, JA at p. A90.

At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that: . . . .

(b)The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; or . . . .

(h)The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States. N.Y. CRIM. PROC. LAW § 440.10.

Petitioner Gristina had been unable to purchase the entire transcript, in her criminal case (Indictment Number 00751-2012) – for 13 August 20212, 16 August 2012, and 25 September 2012 – because Judge Merchan has sealed the transcripts.

The stenographer shall, upon the payment of his fees allowed by

law therefor, furnish a certified transcript of the whole or any part of his minutes, in any case reported by him, to any party to the action requiring the same. N.Y. JUD. LAW § 300.

Judge Merchan denied the motion. Appendix H, App 60. Judge Merchan's Order – denying Petitioner Gristina access to the court minutes in her criminal case – is not appealable. N.Y. CRIM. PROC. LAW § 450.10.

Petitioner Gristina filed a petition in the Appellate Division (in state court), seeking extraordinary relief – in the nature of Mandamus and Prohibition – to obtain the court minutes in her criminal case. The petition was filed pursuant to N.Y. C.P.L.R. LAW § 7803 (1) (mandamus), and N.Y. C.P.L.R. § 7803 (2) (prohibition). JA at pp. A127 to A155. The Appellate Division dismissed the Petition on 14 October 2021. *Matter of Gristina v. Merchan et al.*, 152 N.Y.S.2d 584, 198 A.D.3d 478 (App. Div. 2021). Appendix G, App. 59. After the dismissal Petitioner Gristina sought leave to appeal to the New York State Court of Appeals.

On 20 October 2021, Petitioner Gristina filed a complaint in the District Court – under 42 U.S.C. § 1982 – seeking prospective injunctive and declaratory relief based on the Fourteenth Amendment to the United States Constitution. U.S. CONST. amend. XIV, 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3). *See* Appendix I, App. 66.

On 11 January 2022, the Appellate Division denied Petitioner Gristina's motion for leave to appeal to the New York State Court of Appeals. Appendix F, App.58. On 19 May 2022, the United States District Court dismissed the complaint: Judgment was entered on 20 May 2022. Appendix C, App. 44. The District Court

held that:

Whatever the merits of Gristina's claim, the Court lacks the power to grant her the relief she seeks. Because Gristina has already sought identical unsealing relief in the state appellate court, and because that relief implicates an order that uniquely furthers the state court's judicial function, this Court must abstain from jurisdiction under the *Younger* doctrine. The Court also abstains under the *Rooker-Feldman* doctrine, because Gristina invites this Court to overturn the state trial court's decision. Appendix C, App. 44.

On 16 June 2022, the New York State Court of Appeals denied Petitioner Gristina's motion for leave to appeal. Appendix E, App. 57. Petitioner Gristina filed a Notice of Appeal, in the United States District Court on 20 May 2022. The Second Circuit upheld the lower court decision in an Opinion issued on 12 March 2025: judgment was entered the same. Appendix A, App. 1. Petitioner Gristina filed a petition for panel rehearing, or in the alternative, for rehearing *in banc*, on 26 March 2025. The petition was denied on 21 April 2025. Appendix D, App. 56.

## **REASONS FOR GRANTING THE PETITION**

In this case four tenants of federal law are at issue that involve reinterpretation of federal law – as articulated by this Court – by the Second Circuit. The Second Circuit improperly applied the *Younger* in this case. *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746 (1971), *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 134 S. Ct. 584 (2013).

The holding of the Second Circuit reframes the abstention "exception(s)" in such a way as to swallow the rule. The civil proceedings involving Petitioner Gristina's attempt to obtain the transcripts in her criminal case is not a civil

proceeding involving an order that is uniquely in furtherance of the state courts' ability to perform its' judicial functions; and, once the state proceedings were complete *Younger* abstention no longer applied (essentially, there was nothing to abstain from once the state proceeding concluded) . The *Rooker-Feldman* doctrine was not applicable in this case for two reasons: (1) Petitioner Gristina filed her complaint in federal court while the state court proceedings were still pending, and (2) Petitioner Gristina's injury was not cause by Judge Merchan's Order denying Ms. Gristina access to the transcripts in her criminal case. The transcripts were sealed prior to Judge Merchan's Order. Appendix H, App. 60.

**I. The state court civil proceedings is not “uniquely in furtherance of the state courts’ ability to perform their judicial functions.”**

This Court has held that this exception – under the *Younger* doctrine – applies to situations where the state court is seeking compliance with its' judgment through an enforcement process. In this case the state court proceeding is not uniquely in furtherance of the state court's ability to perform its' judicial functions. *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 367, 109 S. Ct. 2506, 2518 (1989): the Supreme Court cited two cases that illustrate the use of this exception. *Juidice v. Vail*, 430 U.S. 327, 336 n. 12, 97 S. Ct. 1211, 1217 n. 12 (1977), *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13-14, 107 S. Ct. 1519, 1527 (1987) (“Both Juidice and this case involve challenges to the processes by which the State compels compliance with the judgments of its courts.”). The Second Circuit's conflicts with precedent from this Court, and with other Circuits, because this case

does not involve a situation where a state court is seeking compliance with its' judgement. *Rio Grande Cnty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 69 n.9 (1st Cir. 2005), *Jonathan R. v. Justice*, 41 F.4th 316, 330 (4th Cir. 2022), *375 Slane Chapel Rd., LLC v. Stone Cnty.*, 53 F.4th 1122, 1127 (8th Cir. 2022), *Elna Sefcovic, LLC v. TEP Rocky Mt., LLC*, 953 F.3d 660, 671 (10th Cir. 2020), and *Cavanaugh v. Geballe*, 28 F.4th 428, 432 (2d Cir. 2022). See also Appendix B, App. 29 to App. 33

This is not a case where a state court is seeking compliance with its' judgment through an enforcement process, this is a case where Petitioner Gristina is seeking to enforce her constitutional rights under the Fourteenth Amendment. U.S. CONST. amend. XIV. Petitioner Gristina has a property interest in the transcripts in her criminal case. *See Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972) (“Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.”). N.Y. JUD. LAW § 300 (“The stenographer shall, upon the payment of his fees allowed by law therefor, furnish a certified transcript of the whole or any part of his minutes, in any case reported by him, to any party to the action requiring the same.”).

The State of New York set up a process to access the court if a criminal defendant wants to move to vacate the judgment in their criminal case. *Rinaldi v.*

*Yeager*, 384 U.S. 305, 310-11, 86 S. Ct. 1497, 1500-01 (1966) (“This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts. (*Citations omitted*).”), *People v. Corso*, 388 N.Y.S.2d 886, 889, 40 N.Y.2d 578, 580 (1976) (“With the enactment of the Criminal Procedure Law, the Legislature sought to codify the various grounds for coram nobis relief in CPL 440.10 (see *People v Session*, 34 NY2d 254, 255; Denzer, Practice Commentaries, *McKinney's Cons Laws of NY*, Book 11A, CPL 440.10, p 183).”), N.Y. CRIM. PROC. LAW § 440.10, *compare Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585 (1956), *People v. Montgomery*, 18 N.Y.2d 993, 994, 278 N.Y.S.2d 226, 227, 224 N.E.2d 730, 731 (1966).

Petitioner Gristina commenced a state civil proceedings – pursuant to N.Y. C.P.L.R. LAW § 7803 (1) and N.Y. C.P.L.R. law § 7803 (2) – to obtain the transcripts in her criminal case. Appendix G, App. 59. This was not a state court proceeding that uniquely in furtherance of the state court’s ability to perform its’ judicial functions, because the general rule is that relief in a criminal case is not available via N.Y. C.P.L.R. LAW § 7803 (1) and N.Y. C.P.L.R. law § 7803 (2).

In *State v. King* the New York State Court of Appeals restated general rule: “It is equally clear, however, that nonreviewability by way of appeal alone, does not provide a basis for reviewing error by collateral proceeding in the nature either of prohibition or mandamus . . . . The reason for the comment last made is simply stated. The right of review by appeal in criminal matters, except in capital cases, is

determined exclusively by statute (People v. Zerillo, 200 N.Y. 443, 446, 93 N.E. 1108, 1109). This has always been so and the underlying policy is to limit appellate proliferation in criminal matters, sometimes to the seeming detriment of the defendant and sometimes to the detriment of the People. Litigation may be compounded unduly by protracted and multifarious appeals and collateral proceedings frustrating the speedy determination of disputes. Moreover, the frustration may be accomplished by skillful manipulation of appeals and collateral proceedings by those interested in delay.” *State v. King*, 36 N.Y.2d 421, 62-62, 364 N.Y.S.2d 879, 882-83 (1975), *see also Nigrone v. Murtagh*, 36 N.Y.2d 421, 369 N.Y.S.2d 75 (1975) (prosecutorial abuse of a grand jury as a means of exposing public corruption), and *Morgenthau v. Altman*, 58 N.Y.2d 1057; 462 N.Y.S.2d 629 (1983) (specification of the order in which witnesses would be required to testify before a grand jury).

## **II. The *Younger* abstention doctrine does not apply when state court proceedings are no longer pending.**

The *Younger* abstention doctrine does not apply when state court proceedings are no longer pending. Three Circuits have held that abstention is not applicable if the underlying proceeding have been completed or terminated. *See e.g., Bass v. Butler*, 258 F.3d 176, 179 (3rd Cir. 2001) (“Hence, abstention is now inapplicable because it provides for federal deference to ongoing, not completed, parallel state proceedings.”), *Guarino v. Larsen*, 11 F.3d 1151, 1157 n.1 (3rd Cir. 1993), *Sykes v. Cook Cnty. Circuit Court Prob. Div.*, 837 F.3d 736, 740-41 (7th Cir. 2016) (“Between

the district court's ruling and this appeal, Mary died, so her probate proceeding is terminated. As a result of Mary's death, Younger is now a moot question because there is no ongoing state proceeding for us to disturb."), and *Columbian Fin. Corp. v. Stork*, 811 F.3d 390, 393 (10th Cir. 2016) ("The first issue is whether the district court properly abstained under Younger. Younger requires federal courts to refrain from ruling when it could interfere with ongoing state proceedings. *Sprint Communs., Inc. v. Jacobs*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 584, 591, 187 L. Ed. 2d 505 (2013). Though a state court proceeding was ongoing when the federal complaint was filed, the state proceeding terminated while this appeal was pending. In light of this change of circumstances, we vacate the dismissal without prejudice on the equitable claims and remand for further proceedings."). The facts in this case are different from the facts in *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S. Ct. 1200 (1975). In this case Petitioner Gristina exhausted all of her state remedies. Appendix E, App. 57, Appendix F, App. 58.

**III.A The *Rooker-Feldman* doctrine did not bar the District Court from hearing Petitioner Gristina's constitutional claims – involving access to the transcripts in her closed criminal case – because a state court appeal was still pending involving Judge Merchan's Order.**

The Rooker Feldman doctrine did not prevent the District Court from hearing Petitioner case because a state court appeal was still pending. *See Hunter v. McMahon*, 75 F.4th 62, 65 (2d Cir. 2023) ("The district court dismissed Hunter's suit. The district court concluded that it lacked subject matter jurisdiction pursuant to the Rooker-Feldman doctrine, which bars 'cases brought by state-court losers

complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.’ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).”). Appendix B, App. A38 to A39.

**III.B. The *Rooker-Feldman* doctrine did not bar the District Court from hearing Petitioner Gristina’s constitutional claims – involving access to the transcripts in her closed criminal case – because Judge Merchan’s Order was not the cause of the Petitioner’s injury.**

The *Rooker-Feldman* doctrine did not bar the District Court from hearing Petitioner Gristina’s case. The transcripts were sealed before Judge Merchan issued his Order; therefore, Judge Merchan’s Order was not the cause of Petitioner’s Gristina’s injury . Appendix I, App. 66, Appendix B, App. 39 to App. 41. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293, 125 S. Ct. 1517, 1527 (2005) (“If a federal plaintiff ‘present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.’ *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (CA7 1993); accord *Noel v. Hall*, 341 F.3d 1148, 1163-1164 (CA9 2003).”).

## CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,



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