No. 21-442

In the Supreme Court of the United States

RODNEY REED,

Petitioner,

v.

BRYAN GOERTZ,

Respondent.

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

BRIEF OF PROFESSOR FRED SMITH JR. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

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SUMMARY OF ARGUMENT

Respondent contends that Petitioner's suit is barred by a hodgepodge of jurisdictional defects—the *Rooker-Feldman* doctrine, the Eleventh Amendment, and a lack of redressability for purposes of Article III standing. Respondent has misconceived this Court's precedents and the nature of Petitioner's challenge. These jurisdictional doctrines do not impede this Court's ability to decide the question presented.

ARGUMENT

I. Petitioner's Suit Is Not Barred By Rooker-Feldman, The Eleventh Amendment, or Standing Defects

A. The Rooker-Feldman Doctrine Does Not Bar Petitioner's Claim.

As this Court has explained, the *Rooker-Feldman* doctrine "occupie[s]" a "narrow ground": it is "confined to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered

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[1] Pursuant to S. Ct. Rule 37.3(a), all parties have provided written consent to the filing of amicus briefs. No counsel for a party authored this brief in whole or in part, and no person other than the *amici* or their counsel made a monetary contribution to fund its preparation or submission.

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 (2005); *see* Thomas D. Rowe, Jr. & Edward L. Baskauskas, *"Inextricably Intertwined" Explicable At Last?* Rooker-Feldman *Analysis After The Supreme Court's* Exxon Mobil *Decision*, 2006 Fed. Cts. L. Rev. 1 (2006) (noting *Exxon Mobil*'s "insistence generally on narrow applicability of *Rooker-Feldman*").

Indeed, "the *Rooker-Feldman* doctrine has been applied by this Court only twice, *i.e.*, only in the two cases from which the doctrine takes its name," and "[b]oth cases fit this pattern":

> The losing party in state court filed suit in a U.S. District Court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking federal-court review and rejection of that judgment. Alleging federal-question jurisdiction, the plaintiffs in *Rooker* and *Feldman* asked the District Court to overturn the injurious state-court judgment. We held, in both cases, that the District Courts lacked subject-matter jurisdiction over such claims, for 28 U.S.C. § 1257 vests authority to review a state court's judgment solely in this Court.

Skinner v. *Switzer*, 562 U.S. 521, 531-32 (2011).

Thus, in *Skinner*, where the Court considered a claim substantively identical to the instant suit, it had no difficulty in rejecting the notion that *Rooker-Feldman* applied. The *Skinner* Court explained that while "a state-court decision is not reviewable by

lower federal courts," "a statute or rule governing the decision may be challenged in a federal action." *Id.* at 532; *see Dist. Att'y's Office for Third Judicial Dist.* v. *Osborne*, 557 U.S. 52, 71 (2009) (recognizing suit "to demonstrate the inadequacy of the state-law procedures available to [plaintiff] in state postconviction relief" for "access to DNA evidence").

So too here. Like Skinner, Petitioner in this case does not "seek[] federal-court review and rejection of th[e] judgment" rendered by the Court of Criminal Appeals (CCA) rejecting his bid under state law for access to DNA evidence. *Skinner*, 562 U.S. at 532. As the Fifth Circuit recognized, "[t]his case is no different than *Skinner*," given that Petitioner "challenged the constitutionality of Texas's post-conviction DNA statute" as "authoritatively construed" by the CCA. *Reed* v. *Goertz*, 995 F.3d 425, 430 (5th Cir. 2021).

Notwithstanding the Court's exposition of the sharp limits of the *Rooker-Feldman* doctrine in *Exxon Mobil* and *Skinner*, Respondent has contended that *Rooker-Feldman* is implicated where a plaintiff brings *an as-applied* challenge. Resp. Brief in Opp. at 21-22, *Reed* v. *Goertz*, No. 21-442 (Jan. 19, 2022) ("[T]he thrust of Reed's allegations [are] that the CCA's application of Chapter 64 was unconstitutional as to *him*. . . . Because Reed clearly challenged the prosecutor's conduct, and the adverse CCA decision[], his claims are barred by the *Rooker-Feldman* doctrine.") (quotation marks and citations omitted).

This argument misconceives the facts and the law. As a factual matter, Petitioner's complaint expressly "challenges the constitutionality of Article 64 both ***on its face*** and as interpreted, construed and applied by the CCA." J.A. 14. (emphasis added). As a legal

matter, entertaining an as-applied challenge to an authoritatively construed state law does not inherently amount to review of a state-court judgment. "[C]lassifying a lawsuit as facial or as-applied affects the extent to which the invalidity of the challenged law must be demonstrated and the corresponding breadth of the remedy, but it does not speak at all to the substantive rule of law necessary to establish a constitutional violation." *Bucklew* v. *Precythe*, 139 S. Ct. 1112, 1127 (2019) (quotation marks omitted); *see Citizens United* v. *FEC*, 558 U.S. 310, 331 (2010) ("[T]he distinction between facial and as-applied challenges . . . . goes to the breadth of the remedy employed by the Court[.]"). Indeed, Petitioner's suit here is of the species recognized in *Osborne*—a suit "to demonstrate the inadequacy of the state-law procedures available to [plaintiff] in state postconviction relief" for "access to DNA evidence." 557 U.S. at 71. In the mine run of cases, such a suit necessarily requires reference to the state-law procedures as they have been authoritatively construed by state courts.

As Judge Sutton explained in an opinion—quoted by *Skinner*—in a § 1983 action seeking access to DNA evidence, a suit did not implicate *Rooker-Feldman* where it "present[ed] an as-applied challenge to the adequacy of Michigan's procedures for obtaining post-conviction access to DNA and to the actions of the Wayne County Prosecutor's Office in applying those procedures," because that was "not a challenge to the state-court judgment itself." *In re Smith*, 349 F. App'x 12, 18 (6th Cir. 2009) (Sutton, J., concurring in part and dissenting in part); *see Morrison* v. *Peterson*, 809 F.3d 1059, 1070 (9th Cir. 2015) ("Because Morrison . . . seeks to invalidate the DNA testing

statute on federal constitutional grounds, his claim is not barred by *Rooker-Feldman*. That is so even though this portion of his challenge is 'as applied.'").

The Court should reject Respondent's invitation to override its established precedent and expand *Rooker-Feldman* well beyond the doctrine's narrow application.[2]

B. The Eleventh Amendment Does Not Bar Petitioner's Claim.

Respondent contends that Eleventh Amendment sovereign immunity bars Petitioner's suit on the grounds that suits only for declaratory relief do not fall within the ambit of *Ex parte Young*, which establishes an exception to sovereign immunity. But Respondent misunderstands that doctrine.

"The *Ex parte Young* doctrine is based on a 'fiction'—namely, that 'when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.'" *Vann* v. *U.S. Dep't*

[2] Indeed, the position that Respondent takes on the statute-of-limitations issue—i.e., that plaintiffs such as Reed should rush to federal court before their state-law bid for DNA evidence reaches its terminus in state court—raises jurisdictional and comity concerns. *See* Richard H. Fallon, Jr., Daniel J. Meltzer & David Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1410 (7th ed. 2015) ("Rooker and Feldman both involved state court proceedings that were complete when district court challenges were initiated; there was no occasion to inquire whether state remedies should be exhausted before the federal action is entertained, or whether comity principles barred the action. But the 'exclusive jurisdiction' notion underlying Rooker and Feldman may well be relevant when state proceedings are still underway and doctrines of comity, abstention, and exhaustion could also come into play.").

of Interior, 701 F.3d 927, 929 (D.C. Cir. 2012) (Kavanaugh, J.) (quoting *Va. Office for Protection & Advocacy* v. *Stewart*, 563 U.S. 247, 255 (2011)). "The *Ex parte Young* doctrine allows suits for declaratory and injunctive relief against government officials in their official capacities—notwithstanding the sovereign immunity possessed by the government itself." *Id.* By contrast, "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." *Edelman* v. *Jordan*, 415 U.S. 651, 663 (1974).

The "fiction" of *Ex parte Young* flows from the supremacy of the federal Constitution. The doctrine recognizes that "an unconstitutional state enactment is void and that any action by a state official that is purportedly authorized by that enactment cannot be taken in an official capacity since the state authorization for such action is a nullity." *Papasan* v. *Allain*, 478 U.S. 265, 276 (1986).

Thus, "[i]n determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md., Inc.* v. *Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645 (2002) (quoting *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997) (O'Connor, J., concurring in part and concurring in judgment)).

A "declaratory judgment" is undoubtedly "prospective." *L.A. Cnty., Cal.* v. *Humphries*, 562 U.S. 29, 30 (2010). Thus, under its precedents, this Court should have no difficulty in reaching the conclusion

that Petitioner's suit for declaratory relief falls within the reach of *Ex parte Young*. *See Alden* v. *Maine*, 527 U.S. 706, 747 (1999) (under "*Ex parte Young*, . . . certain suits for declaratory ***or*** injunctive relief against state officers must therefore be permitted if the Constitution is to remain the supreme law of the land") (emphasis added).

Notwithstanding the foregoing principles, Respondent—citing *California* v. *Texas*, 141 S. Ct. 2104, 2114 (2021)—contends that *Ex parte Young* does not apply because Petitioner "failed to show a necessary connection between the state actor"—the Texas district attorney sued as Respondent here—"and the complained of constitutional deprivation." Resp. Brief in Opp. at 23; *see id.* ("In the language of *Ex parte Young*, the district attorney is not the state actor who may behave unconstitutionally in the future.").

Respondent ignores, however, that this Court has soundly countenanced previous suits for declaratory relief against district attorneys when plaintiffs have challenged DNA-testing statutory schemes as violative of procedural due process. *See Skinner*, 562 U.S. at 529; Complaint ¶ 36, *Skinner*, 2009 WL 5143169 (suing a district attorney for, *inter alia*, "[a] declaratory judgment that Plaintiff is entitled to access to [certain] evidence for DNA testing"); *see also Osborne*, 557 U.S. at 60, 71; Complaint ¶ 8, *Osborne* v. *District Attorney's Office for the Third Judicial District, Anchorage, Alas.*, 2003 WL 25830825 (suing, *inter alia*, the district attorney).

Here, as in *Skinner* and *Osborne*, Petitioner has established a connection between the governmental defendant in this suit (the district attorney) and the relief Petitioner seeks (a declaration that Texas's

statutory scheme violates his procedural due process rights). Petitioner alleges that "Defendant Goertz has directed or otherwise caused each of the non-party custodians of the evidence . . . to refuse to allow Mr. Reed to conduct DNA testing on the evidence in their custody." J.A. 15.[3] He also alleges that Article 64, as authoritatively construed, furnishes the basis for the District Attorney's actions. That is enough, under the legal principles discussed above, to defeat Respondent's invocation of sovereign immunity, and permit Petitioner's suit to vindicate the federal Constitution to proceed to adjudication on the merits.

C. Petitioner Has Standing To Bring This Suit.

Relatedly, Respondent contends that Petitioner lacks Article III standing because he seeks only declaratory relief as against a district attorney. That argument is without merit.

To establish standing, a litigant "must show (1) an injury in fact, (2) fairly traceable to the challenged

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[3] Relying on the *Ex parte Young* doctrine, litigants routinely seek prospective relief against state officials tasked with administering and enforcing unconstitutional state laws. *See e.g., N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, No. 20-843, 2022 WL 2251305, at *7 (U.S. June 23, 2022) ("Respondents are the superintendent of the New York State Police, who oversees the enforcement of the State's licensing laws, and a New York Supreme Court justice, who oversees the processing of licensing applications in Rensselaer County. Petitioners sued respondents for declaratory and injunctive relief under Rev. Stat. 1979, 42 U.S.C. § 1983, alleging that respondents violated their Second and Fourteenth Amendment rights by denying their unrestricted-license applications on the basis that they had failed to show 'proper cause,' i.e., had failed to demonstrate a unique need for self-defense.").

conduct of the defendant, (3) that is likely to be redressed by the requested relief." *Fed. Election Comm'n* v. *Cruz*, 142 S. Ct. 1638, 1646 (2022). Petitioner's allegations easily meet the requirement that a plaintiff has "allege[d] personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" Resp. Brief in Opp. at 24; *California* v. *Texas*, 141 S. Ct. at 2113 (quoting *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 342 (2006)).

First, Petitioner's "personal injury" is the denial of postconviction DNA testing he seeks in an attempt to prove he is innocent of his crime of conviction. It cannot be gainsaid that this is sufficient for standing purposes. *See, e.g.*, *LaMar* v. *Ebert*, 681 F. App'x 279, 285 (4th Cir. 2017) ("[Plaintiff's] lack of access to DNA evidence has deprived him of his liberty interests in utilizing state procedures to obtain reversal of his conviction . . . . It is somewhat difficult to understand what more could be required[.[") (internal citation omitted).

Second, Petitioner alleges that this injury is "fairly traceable" to Respondent's conduct. This requires nothing more than a showing of but-for causation. *See*, *e.g., Linda R. S.* v. *Richard D.,* 410 U.S. 614, 617 (1973). Here, the but-for causation is manifest: Petitioner alleges that Respondent "'has the power to control access' to the evidence" but will not permit access for purposes of DNA testing. *See, e.g.*, J.A. 15-16. And, as noted, he alleges that Respondent "has directed or otherwise caused each of the non-party custodians of the evidence . . . to refuse to allow Mr. Reed to conduct DNA testing on the evidence in their custody." J.A. 15.

Third, the relief sought here is "likely" to redress the injury. That is, if this Court declares the challenged requirements of Article 64 unconstitutional, one would expect Respondent to abide by that declaration and cease his violative conduct (allegedly done on the basis of Article 64, as construed by the state courts). *See, e.g.*, *Franklin* v. *Massachusetts*, 505 U.S. 788, 803 (1992) (concluding that the alleged injury was "likely to be redressed by declaratory relief" because the Court "may assume it is substantially likely that the President and other executive and congressional officials will abide by an authoritative interpretation" of the law at issue).

Thus, Petitioner's suit does not seek an "opinion advising what the law would be upon a hypothetical state of facts," which this Court explained in *California* v. *Texas* is insufficient for standing for declaratory relief. 141 S. Ct. 2104, 2116 (2021) (cited in Resp. Brief in Opp. at 24). In that case, this Court held that plaintiffs lacked standing to sue for the harm they suffered—"the costs of purchasing health insurance" per a statutory mandate—because, "[w]ith the penalty zeroed out, the IRS can no longer seek a penalty from those who fail to comply." *Id.* at 2114. Thus, "there is no possible Government action that is causally connected to the plaintiffs' injury[.]" *Id.* "In a word, they have not shown that any kind of Government action or conduct has caused or will cause the injury they attribute to" the statutory mandate "to obtain minimum essential health insurance coverage." *Id.* at 2112, 2114. By contrast, Petitioner alleges the district attorney *is* causing his access to postconviction DNA testing to be denied. Thus, Respondent's cited case is inapposite.

CONCLUSION

For the foregoing reasons, no jurisdictional obstacles impede this Court's ability to resolve the important question as to which certiorari was granted.

Respectfully submitted,

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