12/8/25

No. 25-1172

In The

Supreme Court of the United States

JULIE A. WEIMAN,

Petitioner,

v.

ALYN D. WINE;
WINE PROPERTIES, LLC,

Respondents.

On Petition for Writ of Certiorari
to the Colorado Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. **Fraud Exception / Access to Courts.** Whether the Tenth Circuit's categorical rejection of an "extrinsic fraud" exception to the Rooker Feldman doctrine in direct conflict with the Ninth and Sixth Circuits unconstitutionally immunizes state-court judgments procured through the willful fabrication of evidence and attorney fraud, thereby depriving victims of judicial corruption of their First and Fourteenth Amendment rights to due process and meaningful access to the courts.

2. **State Action and Unreasonable Seizure.** Whether a private litigant's calculated corruption of state judicial proceedings through the fabrication of evidence and suppression of exculpatory proof, perpetrated with the active complicity of legal counsel to induce judicial error and seize a primary residence, constitutes "state action" under the "joint participation" doctrine *of Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), and *Dennis v. Sparks*, 449 U.S. 24 (1980), such that execution of that judgment is an unreasonable seizure under the Fourth and Fourteenth Amendments.

3. **Fraud on the Court and Inherent Equitable Power.** Whether federal courts possess the inherent equitable power, as established in *Marshall v. Holmes*, 141 U.S. 589 (1891), and *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and preserved by Fed. R. Civ. P. 60(d), to entertain independent actions to

set aside or enjoin the enforcement of state-court judgments obtained by "fraud on the court" where state procedural bars prevent the victim from obtaining relief, and whether refusal to exercise that power in deference to Rooker–Feldman denies the constitutional right to a fair tribunal and a federal forum.

4. **Judicial Takings, Due Process, Equal Protection, and Excessive Fines.** Whether the Due Process, Equal Protection, Takings, and Excessive Fines Clauses permit a state court to award more than $442,000 in attorney's fees to the party who procured its judgment through fraud, in direct contravention of the parties' Settlement Agreement, the American Rule, and C.R.S. § 13-17-102's requirement of express findings that a claim or defense was "substantially frivolous, substantially groundless, or substantially vexatious."

PARTIES TO THE PROCEEDING

The Petitioner is Julie A. Weiman, the plaintiff and appellant in the proceedings below, who seeks relief from a judgment procured by fraud. The Respondents are Alyn D. Wine and Wine Properties, LLC, the defendants and appellees below, who are alleged to have orchestrated the fraudulent scheme described herein.

RELATED PROCEEDINGS

District Court, Arapahoe County, Colorado
Plaintiff: Alyn D. Wine
v.
Antheiaus Conquest; Julie A. Weiman; Brenda Fay White; Caliber Home Loans, Inc.; John Doe 1-3; The investors Source LLC; Credit Union of Colorado; and the Public Trustee of Arapahoe County
Case #2017CV32174

District court arapahoe county colorado
Plaintiff: Alyn D. Wine; Wine Properties, LLC
v.
Antheiaus Conquest; Julie A. Weiman; Conglomeride Inc. d/b/a Ainsworth & Fitch; Streete Investments LLC; and the public trustee of Arapahoe County
Case #2019CV30266

Colorado Court of appeals
Plaintiffs-Appellees: Alyn D. Wine and Wine properties LLC
v.
Defendant-Appellants: Julie A Weiman

Case #2024CA680

Colorado Supreme Court
Petitioner: Julie A Weiman
v.
Respondent: Alyn D. Wine and Wine properties LLC
Case #2025SC346

Colorado court of appeals
Plaintiff-Appellee: Alyn D Wine
v.
Defendant-Appellant: Julie A Weiman
Case #2025CA518

Colorado Supreme court
Petitioner: Julie A Weiman
v.
Respondent: Alyn D. Wine
Case #2025SC328

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Constitutional Provisions, Statutes, and Rules

1. OPINIONS BELOW

The opinion of the Colorado Court of Appeals in Wine v. Weiman, No. 24CA0680 (Colo. App. May 1, 2025) (unpublished), affirming the judgment against Petitioner, is reproduced at App. D. In relevant part, the Court of Appeals

(1) acknowledged that the trial court erred in holding that Respondent Wine had "no duty" to release the deed of trust, but deemed the error harmless, and

(2) denied Respondents' request for appellate attorney's fees, expressly rejecting their contention that Petitioner's appeal was frivolous. Id. ¶¶ 37–38, 56–57; App. B

The order of the Supreme Court of Colorado denying the Petition for Writ of Certiorari was entered on September 8, 2025, in Case No. 25SC328 and is reproduced at App. A

2. JURISDICTION

The Supreme Court of Colorado denied Petitioner's timely petition for discretionary review on September 8, 2025. This Petition for Writ of Certiorari is filed within 90 days of that date, pursuant to Supreme Court Rule 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

3. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I provides in relevant part: "Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances."

U.S. Const. amend. IV provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

U.S. Const. amend. VIII provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

U.S. Const. amend. XIV, § 1 provides: "No State shall ... 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."

C.R.S. § 13-17-102 provides in relevant part that attorney's fees may be awarded only upon a finding that an action or defense was "substantially frivolous, substantially groundless, or substantially vexatious."

42 U.S.C. § 1983 and other relevant provisions are reproduced in full at App. B.

4. STATEMENT OF THE CASE

This petition arises from a systemic failure of the judicial process in Colorado, a failure engineered by

the calculated maleficence of Respondent Alyn D. Wine and his agents. Through a sophisticated scheme of evidentiary fabrication, procedural manipulation, and fraud upon the court, Respondents procured a state-court judgment that stripped Petitioner Julie A. Weiman of her property and civil rights. This case does not present mere dissatisfaction with a state court's factual findings. It presents a fundamental question regarding the integrity of the American judicial system: Can a judgment obtained by the "corruption of the judicial power" through fabricated evidence stand immune from federal review due to an overbroad application of the Rooker–Feldman doctrine?

The record below demonstrates that Respondents did not merely litigate; they subverted the machinery of justice. By introducing falsified financial instruments and suborning perjury with the complicity of legal counsel, they induced the state court into a comedy of harmful errors culminating in a **November 12, 2024 Amended Order Re Plaintiffs Alyn Wine and Wine Properties, LLC Request for Attorneys' Fees and Costs ("Fee Order")**, which awarded **$442,056.60 in attorney's fees and $19,299.06 in costs** against Petitioner and her co-defendants. Fee Order at 8–9, App. B.. The Tenth Circuit's refusal to recognize an exception to Rooker–Feldman for such extrinsic fraud creates a safe harbor for fraudsters, deepening a circuit split that leaves victims of judicial corruption in Colorado without the remedies available to citizens in the Ninth and Sixth Circuits.

5. SUMMARY OF THE ARGUMENT

This case asks whether the Constitution and this Court's precedents tolerate a world in which the more successful a litigant's fraud in state court, the more insulated the resulting judgment becomes from federal review.

First, there is an entrenched circuit split over whether the Rooker–Feldman doctrine bars independent federal actions alleging extrinsic fraud in the procurement of a state-court judgment. The Ninth and Sixth Circuits hold that such actions are permissible because the injury arises from the adversary's wrongful conduct, not from the legal correctness of the state-court decision. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140–41 (9th Cir. 2004); *McCormick v. Braverman*, 451 F.3d 382, 392–95 (6th Cir. 2006). The Tenth Circuit, by contrast, "do[es] not recognize an 'extrinsic fraud' exception to Rooker–Feldman," *Tal v. Hogan*, 453 F.3d 1244, 1256 (10th Cir. 2006), and extends the doctrine to bar even claims that a judgment was obtained by fabricated evidence and attorney fraud. That conflict sharpened by this Court's narrowing of *Rooker Feldman in Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) means that a litigant in California has a federal remedy for a fraud-tainted judgment that a similarly situated litigant in Colorado categorically lacks.

Second, the decision below conflicts with this Court's longstanding recognition that federal courts possess equitable power to relieve parties from judgments procured by fraud on the court. In *Marshall v. Holmes,*

141 U.S. 589 (1891), this Court held that a federal court may enjoin a party from enjoying the fruits of a state-court judgment obtained by forgery and perjury. In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), the Court reaffirmed that "tampering with the administration of justice" through fabricated evidence is a "wrong against the institutions set up to protect and safeguard the public," *id.* at 246, and may justify setting aside the judgment years later. The Tenth Circuit's rigid application of Rooker–Feldman effectively nullifies those decisions and leaves "fraud on the court" without a federal remedy.

Third, the record here is not a close call. Petitioner alleges supported by bank metadata and a sworn affidavit that Respondents back-dated mortgage checks to create the illusion of timely performance, while their counsel suppressed audio recordings from the mortgage servicer confirming non-payment. The trial court then

> (1) granted partial summary judgment on a "first to breach" theory that presupposed Wine's performance.
>
> (2) years later refused to consider the newly discovered bank evidence that undermined that premise; and
>
> (3) ultimately, in the **November 12, 2024 Fee Order**, awarded more than **$442,000 in attorney's fees and $19,299.06 in costs** to the very party that benefitted from the fraud despite a Settlement Agreement providing that *"each*

> *party [is] to be responsible for its own fees and costs,"*

and despite the absence of any findings required by C.R.S. § 13-17-102 that Petitioner's claims or defenses were "substantially frivolous, substantially groundless, or substantially vexatious." Fee Order at 1–9, App. B.

When Weiman appealed, the Colorado Court of Appeals acknowledged that the trial court erred in concluding that Wine had no duty under the Agreement to release his Deed of Trust, but deemed that error "harmless" because it accepted a "first-tobreach" narrative in which Conquest's collection of rents just before October 1, 2018 supposedly made Weiman the initial breaching party. Wine v. Weiman, 2025 COA 24CA0680, ¶¶ 37–40 (Colo. App. May 1, 2025) (unpublished). Yet even taking the Court of Appeals' version of events at face value, that "first to breach" analysis is legally untenable under Colorado law, which recognizes that a party cannot breach a duty that has not yet arisen. See *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992); *Stan Clauson Assocs., Inc. v. Coleman Bros. Constr., LLC*, 297 P.3d 1042, 1049 (Colo. App. 2013); C.R.S. § 13-80-108(4).

The resulting inconsistency is stark. On the one hand, fee shifting under C.R.S. § 13-17-102 requires a finding that a claim or defense was "substantially frivolous, substantially groundless, or substantially vexatious." On the other, in the same opinion that leaves the **Fee Order** intact, the Court of Appeals expressly denies Wine's request for appellate attorney fees because

"[a]lthough Weiman did not prevail, we do not agree that her appeal was frivolous or lacking in substantial justification." Wine, ¶¶ 56–57.

A regime in which a litigant can lose her home and hundreds of thousands of dollars in fees on the theory that her litigation position was frivolous while the appellate court simultaneously holds that her challenge to that very judgment was not frivolous illustrates precisely how Respondents' fraud and the courts' misapplied "first-tobreach" analysis combined to produce an arbitrary, constitutionally defective result.

Fourth, the result is a judgment that offends core constitutional guarantees. Petitioner's procedural due process rights were violated when the state courts refused to meaningfully consider evidence that the October 2018 payments were backdated and instead enforced a judgment born of a corrupted record. Her substantive due process rights and takings protections were violated when the court converted more than $442,000 of her equity secured by a deed of trust on her home into a fee award, via the **Fee Order**, that contradicts the parties' contract, the American Rule, and Colorado's fee-shifting statute. Her equal protection rights are implicated where she, unlike other similarly situated litigants, was singled out to pay the legal fees of the party found by the Court of Appeals to have been wronged by her conduct, yet whose own fee-shifting request was denied for lack of frivolousness. And the planned execution on her residence under color of that void, fraud-tainted fee judgment raises grave questions under the Fourth

Amendment (unreasonable seizure) and Eighth Amendment (excessive fines).

Finally, the First Amendment right "to petition the Government for a redress of grievances" is hollow if, in entire swaths of the country, litigants are barred from accessing federal courts to expose and remedy fraud that subverts state adjudications. A jurisdictional rule that tells victims of judicially ratified fraud, "you have rights but no forum" is incompatible with the Constitution and with this Court's own precedent preserving an "independent action" in equity to prevent unconscionable judgments. The petition thus presents not only a clean vehicle to resolve the Rooker–Feldman fraud-exception split, but also a necessary opportunity to reaffirm that federal courts remain open to those alleging that the judicial process itself has been weaponized as an instrument of theft.

I. FACTUAL BACKGROUND: THE ARCHITECTURE OF FRAUD

On September 19, 2018, the parties executed a Confidential Settlement Agreement and Mutual Release ("Settlement Agreement") to resolve pending litigation in Arapahoe and Adams Counties. The Agreement identified a $570,000 Promissory Note dated June 1, 2017 and the corresponding Deed of Trust ("DOT") securing that Note, as well as an additional loan of $187,532 from Wine to Petitioner and her husband. Settlement Agreement at 1, App.C

Under Paragraph 1, Wine agreed to pay Petitioner and her husband $40,000 on October 1, 2018, to "use his

best efforts to take out new loans to resolve the first mortgages on the Properties as soon as possible," and, if refinancing was not in place by October 1, to "make the first mortgage payments on the Properties ... until replacement financing is in place." *Id.* ¶ 1, App. C

Paragraph 2 required Petitioner and her husband to transfer title to the four rental properties Joliet, Kramer, Elkhart, and Lansing by quitclaim deed effective October 1, 2018, and provided that: "[u]pon recording of the Quit Claim Deeds, Wine shall release the DOT and deem the Note paid in full." *Id.* ¶ 2, App. C

Paragraph 3 obligated Petitioner and her husband to cooperate in transferring leases and deposits and expressly stated that: "Wine shall be entitled to all rental income on the Properties effective October 1, 2018," and "shall be liable for all costs and expenses related to the Properties effective October 1, 2018." *Id.* ¶ 3, App.

Critically, Paragraph 4 required dismissal of the pending litigations with "each party to be responsible for its own fees and costs," codifying the American Rule in the parties' contract. *Id.* ¶ 4, App. C

Wine materially breached the Agreement immediately. He failed to make required payments on October 1, 2018, and never cured. To conceal this breach Wine manufactured a claim against Weiman, Wine and his agents engaged in a scheme of extrinsic fraud. They falsified records and backdated checks to create a fictional history of timely performance later shown by

bank metadata to have been created months after the purported dates.

On March 9, 2020, the trial court granted Wine's Motion for Partial Summary Judgment on his breach-of-contract claim regarding the October 2018 rents. In doing so, the court

> (1) treated the September 19, 2018 Settlement Agreement as a binding contract;
>
> (2) reaffirmed prior rulings that Wine had "no duty" under the Agreement to release the Deed of Trust encumbering the Arapahoe property; and
>
> (3) found that Conquest's collection of the October 2018 rental receipts "a few days prior" to October 1, 2018, and failure to remit those rents to Wine, constituted a breach warranting judgment for $6,940.

See Order – Re: Plaintiff's Motion for Summary Judgment ("Summ. J. Order") ¶¶ 6–9, 31–34, *Wine v. Weiman,* No. 2019CV30266 (Colo. Dist. Ct. Arapahoe Cty. Mar. 9, 2020), App. D

Compounding this fraud, Wine's counsel possessed audio recordings from the mortgage servicer confirming Wine's non-payment. Counsel suppressed this exculpatory evidence, violating the duty of candor to the tribunal, and successfully misled the trial court into granting partial summary judgment and, later, a crushing attorney-fee award against Petitioner by way of the November 12, 2024 **Fee Order**. See App.B

(Caliber recordings; counsel's admission she had reviewed them; Fee Order).

The distinction between intrinsic and extrinsic fraud is central. Intrinsic fraud involves matters that were, or could have been, contested in the original action, such as ordinary perjury. Extrinsic fraud, by contrast, consists of conduct that prevents a party from having a full and fair opportunity to present her case or defense. *See United States v. Throckmorton*, 98 U.S. 61 (1878). Here, the fraud was extrinsic because it involved:

- concealment of critical exculpatory evidence during discovery,

- the fabrication of documents that misled both Petitioner and the court concerning Respondents' performance, and

- the use of motions in limine and procedural devices to block Petitioner from exposing the truth.

Respondents manufactured financial records to dupe the court into granting them redress on claims that did not exist and that, under the parties' Settlement Agreement, they had no right to assert. They did so to conceal their own material breaches and noncompliance and to prevent Petitioner from asserting her bona fide contractual and tort claims. This fabrication was not the act of a rogue layperson; it was facilitated and ratified by legal counsel who, as officers of the court, owed a duty of candor.

This fraud on the court, a species of fraud that "defiles the court itself," involved "more than an injury to a single litigant"; it was a "wrong against the institutions set up to protect and safeguard the public." Hazel-Atlas, 322 U.S. at 246. The introduction of fabricated documents induced the trial court to make factual findings that were objectively false, leading to a judgment that was void ab initio.

II. THE STATE COURT PROCEEDINGS: A "COMEDY OF ERRORS"

Relying on the fabricated checks and a record cleansed of exculpatory evidence, the district court granted partial summary judgment to Wine on breach of contract and ultimately entered judgment against Petitioner after a bench trial. See App. D (summary-judgment order; amended findings and judgment).

The court's errors culminated in the **November 12, 2024 [Amended] Order Re Plaintiffs Alyn Wine and Wine Properties, LLC Request for Attorneys' Fees and Costs ("Fee Order")**, awarding **$442,056.60 in attorney's fees and $19,299.06 in costs** against Petitioner and her co-defendants. Fee Order at 8–9, App. B. That fee award represents an arbitrary deprivation of property because:

First, the $442,056.60 attorney's fee award violated the Settlement Agreement. Paragraph 4 expressly provides that, upon executing the Agreement and dismissing the Adams and Arapahoe litigations, "each party [is] to be responsible for its own fees and costs." Settlement Agreement ¶ 4, App. C.

By shifting nearly half a million dollars in fees to Petitioner, the trial court did not merely misinterpret the contract; it rewrote it.

Second, the award violated the American Rule. In its March 9, 2020 summary-judgment order, the trial court correctly recited that "[i]n the absence of a specific statute, court rule, or contract provision to the contrary, attorney fees are not recoverable by a prevailing party in a contract or tort action." Summ. J. Order ¶ 44 (quoting *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499, 503 (Colo. App. 2003)), App. E.

No such contract "provision to the contrary" is present in fact Paragraph 4 of the Settlement Agreement absolutely forbids fee-shifting.

Third, the award violated Colorado statute. C.R.S. § 13-17-102(4) authorizes feeshifting only when a claim or defense "lacked substantial justification," defined as: "substantially frivolous, substantially groundless, or substantially vexatious." Summ. J. Order ¶ 45 (quoting § 13-17-102(4)), App. D.

By statute, any fee award under §§ 13-17-102 and -103 must be supported by specific findings identifying which claims or defenses lacked substantial justification and explaining the reasons for the award. The **Fee Order** does neither. It performs a generic lodestar calculation, recites the eight factors in Rule 1.5 of the Colorado Rules of Professional Conduct, praises counsel's skill and billing rates, and simply awards the full $442,056.60 as "reasonable" without ever finding that Petitioner's claims or defenses were

substantially frivolous, groundless, or vexatious, or tying specific blocks of time to any allegedly unjustified conduct. Fee Order at 5–8, App. B

The Colorado Court of Appeals then denied Wine's request for appellate attorney fees under § 13-17-102(2), expressly concluding that Petitioner's appeal 'was not frivolous or lacking in substantial justification.' *Wine v. Weiman*, 2025 COA 24CA0680, ¶¶ 56–57 (Colo. App. May 1, 2025) (unpublished).

The combination of

(1) a contract that bars fee-shifting,

(2) a trial court that recites the statutory standard and then bypasses it, and

(3) an appellate court that finds the appeal non-frivolous but leaves the trial-level **Fee Order** intact, yields a fee judgment that is arbitrary, internally contradictory, and constitutionally suspect.

Despite these defects, the district court refused to reopen the judgment when confronted with newly discovered evidence, including bank affidavits and servicing testimony showing the checks had been processed months late and in a sequence inconsistent with Respondents' story. See App. D. (Rule 60(b) motion; denial).

On appeal, the Colorado Court of Appeals agreed that the trial court erred in one critical respect: it held that

the trial court was wrong to find that Wine had "no duty" under the Settlement Agreement to release the deed of trust encumbering Petitioner's residence and the rentals. *Wine v. Weiman,* slip op. ¶ 37; App. A. Yet the Court of Appeals deemed this error harmless, reasoning that Petitioner's husband's collection of October 2018 rents "*a few days prior*" to October 1, 2018 rendered the timing of the deed-of-trust release irrelevant. *Id.* ¶¶ 37–38. The appellate court thus acknowledged one error while leaving intact a judgment and the November 12, 2024 **Fee Order** resting on a record tainted by fraud and evidentiary exclusion.

Colorado law recognizes that a judgment procured by fraud is a nullity, and that an independent action may lie to relieve a party from such a judgment. *See Southeastern Colo. Water Conservancy Dist. v. Cache Creek Mining Tr.,* 854 P.2d 167, 176 (Colo. 1993). Yet in Petitioner's case, the courts effectively immunized Respondents' conduct by treating the fabrication of evidence as a "credibility issue" resolved at trial, rather than a structural defect in the proceedings.

Petitioner is now left with a void judgment that authorizes the seizure of her home and equity to pay the legal fees of the very party who deceived the court.

III. THE FEDERAL PROCEEDINGS AND THE CIRCUIT SPLIT

Petitioner sought relief in federal district court under 42 U.S.C. § 1983 and the court's inherent equitable powers, invoking *Marshall* and *Hazel-Atlas* to set

aside or enjoin enforcement of the fraudulent state judgment, including the November 12, 2024 **Fee Order**. The district court dismissed for lack of subject-matter jurisdiction under Rooker and Feldman, treating Petitioner's complaint as an impermissible "appeal" from state-court decisions rather than an independent action for extrinsic fraud and fraud on the court.

The Tenth Circuit affirmed, following its precedent in *Tal v. Hogan*, 453 F.3d 1244 (10th Cir. 2006), which categorically rejects any "extrinsic fraud" exception to Rooker–Feldman. See also *Myers v. Wells Fargo Bank, N.A.*, 685 F. App'x 679 (10th Cir. 2017). This stance squarely conflicts with the Ninth and Sixth Circuits, which hold that Rooker–Feldman does not bar independent federal actions alleging extrinsic fraud because such claims attack the adverse party's misconduct, not the state court's legal conclusions. *See Kougasian*, 359 F.3d 1136; *McCormick*, 451 F.3d 382; *In re Sun Valley Foods Co.*, 801 F.2d 186 (6th Cir. 1986).

The decision below deepens an entrenched circuit split and leaves victims of fraudulent state-court judgments in the Tenth Circuit with no federal forum even when their injuries flow not from a court's legal reasoning, but from a corrupted record and a fraudulently obtained judgment.

This petition seeks to resolve that entrenched split and restore the power of federal courts to address fraud on the court and protect core constitutional rights.

6. REASONS FOR GRANTING THE PETITION

The judgment below, **rendered in a jurisdiction where the Tenth Circuit categorically refuses to recognize an extrinsic-fraud exception to the Rooker–Feldman doctrine**, leaves Petitioner with no meaningful state or federal avenue to challenge a judgment she alleges was procured by fraud. In that setting, the existing circuit split over the fraud exception is not an abstract doctrinal disagreement; it determines whether victims of judicially ratified fraud have any federal forum at all. By pairing Colorado courts' refusal to correct a fraud-tainted judgment with a federal circuit regime that would bar any independent fraud action at the courthouse door, the legal framework surrounding this case creates precisely the kind of **constitutional dead zone** this Court must address.

I. THE DECISION BELOW, IN A ROOKER–FELDMAN "DEAD ZONE," DEEPENS AN INTRACTABLE CIRCUIT SPLIT AND VIOLATES THE FIRST AMENDMENT RIGHT OF ACCESS TO COURTS.

The Tenth Circuit's refusal (in *Tal* and progeny) to recognize an "extrinsic fraud" exception to Rooker–Feldman does more than create a doctrinal split; in a case like this, it creates a **constitutional trap.** By barring federal review of state judgments procured by fraud, the governing federal precedent in this jurisdiction ensures that once the state courts have declined to correct a fraud-tainted judgment, no

lower federal court may ever examine the fraud itself.

The federal circuits are deeply divided on whether Rooker Feldman strips district courts of jurisdiction over independent actions challenging state-court judgments obtained by extrinsic fraud. This Court's intervention is required to establish a uniform rule that preserves both the integrity of the judicial process and the right to petition the government for redress.

A. THE NINTH AND SIXTH CIRCUITS CORRECTLY HOLD THAT EXTRINSIC-FRAUD CLAIMS ARE NOT BARRED BY ROOKER–FELDMAN.

The Ninth Circuit has taken the lead in correctly interpreting the limits of the Rooker–Feldman doctrine. In *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004), the court held that the doctrine "does not apply to a suit seeking to set aside a state-court judgment where the plaintiff alleges that the judgment was obtained by extrinsic fraud."

The reasoning is grounded in the nature of the injury: when a plaintiff alleges extrinsic fraud, she is not complaining of a legal error by the state court (an appeal), but of a wrongful act by the defendant (a tort and an abuse of process).

As the Ninth Circuit explained, "[e]xtrinsic fraud is conduct which prevents a party from presenting his claim in court." Id. at 1140. Because the state court never had a meaningful opportunity to adjudicate the fraud, the federal suit does not seek to overturn a

"merits" determination. It seeks equitable relief from a corrupted process.

Similarly, the Sixth Circuit recognizes that Rooker Feldman does not bar claims where the source of the injury is the opponent's fraud rather than the state-court judgment itself. In *McCormick*, the court distinguished between claims alleging that the state court ruled incorrectly (barred) and claims alleging that the defendant procured the judgment through "fraud, deception, accident, or mistake" (not barred). 451 F.3d at 392–95. The Sixth Circuit understands that a judgment procured by fraud is void, and that a federal court exercising original jurisdiction to address that fraud is not sitting in appellate review of the state court.

These circuits adhere to the principle that "a federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake." *In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986).

B. THE "ANTI-FRAUD" BAR VIOLATES THE FIRST AMENDMENT.

The First Amendment guarantees the right "to petition the Government for a redress of grievances." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).

That right is meaningless when the judicial machinery is corrupted by "sham litigation" and fraud, and when

victims are categorically denied any forum in which to expose that corruption.

By refusing, in precedents like *Tal* and *Myers*, to entertain independent actions to set aside or enjoin enforcement of fraudulently procured judgments, federal courts in circuits like the Tenth have announced that victims of fraud on the court may never have their injuries heard on the merits in any federal trial forum. In a case arising from Colorado a state within that circuit those precedents operate as a **blanket gag rule**: Petitioner may knock at the courthouse door, but the jurisdictional bar ensures she will be turned away unheard.

In that sense, the Rooker Feldman "anti-fraud" bar, as applied in the Tenth Circuit, does not simply allocate cases between state and federal courts; it **extinguishes** the First Amendment right of meaningful court access for an entire class of claims.

C. THE TENTH CIRCUIT, JOINED BY THE SECOND, FIFTH, SEVENTH, EIGHTH, AND ELEVENTH CIRCUITS, ERRONEOUSLY REJECTS THE FRAUD EXCEPTION.

In direct conflict with the Ninth and Sixth Circuits, the Tenth Circuit has adopted a rigid and formalistic view that closes the federal courthouse doors to victims of fraud. In *Tal v. Hogan*, the court explicitly stated: "We do not recognize an 'extrinsic fraud' exception to Rooker–Feldman." 453 F.3d at 1256. Under this precedent, even if a plaintiff can prove that a state

judgment was obtained through bribery or egregious fabrication of evidence, the federal court lacks jurisdiction.

Other circuits have followed similar paths. The Eleventh Circuit has noted the split but declined to adopt an exception. *Scott v. Frankel*, 606 F. App'x 529, 532 n.4 (11th Cir. 2015). The Second Circuit likewise treats many fraud-based challenges as "inextricably intertwined" with the state judgment and thus barred. *Kropelnicki v. Siegel*, 290 F.3d 118 (2d Cir. 2002). Various decisions in the Fifth, Seventh, and Eighth Circuits similarly reflect skepticism toward any fraud-based carve-out to Rooker–Feldman.

D. THE TENTH CIRCUIT'S APPROACH VIOLATES *EXXON MOBIL* AND INVITES ABUSE.

The Tenth Circuit's approach is inconsistent with this Court's clarification of Rooker–Feldman in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005). There, this Court confined Rooker–Feldman to "cases brought by state-court losers complaining of injuries caused by state-court judgments ... and inviting district court review and rejection of those judgments." Id. at 284. Crucially, the Court noted that if a federal plaintiff "presents some independent claim, albeit one that denies a legal conclusion that a state court has reached," jurisdiction exists. Id. at 293.

A claim of extrinsic fraud is the paradigm of an independent claim: it asserts a separate wrong the fraud itself and the resulting corruption of process. By

treating such claims as mere appeals, the Tenth Circuit ignores the independent, tortious nature of the misconduct and converts Rooker–Feldman into a shield for fraud.

The result is perverse: litigants in the Tenth Circuit can secure **immunity** for their fraud simply by ensuring it results in a state-court judgment. The more successful the fraud, the more unassailable the result. This geographic disparity where a litigant in California has a remedy that a litigant in Colorado is denied is precisely the type of conflict this Court exists to resolve.

II. THE LEGAL REGIME GOVERNING THIS CASE CONFLICTS WITH THIS COURT'S PRECEDENTS AUTHORIZING INDEPENDENT ACTIONS TO RELIEVE PARTIES FROM FRAUDULENT JUDGMENTS.

The refusal of some federal circuits to exercise jurisdiction over extrinsic-fraud actions and the practical effect of that refusal in a case arising from Colorado ignores a line of Supreme Court precedent establishing the power of federal courts to grant equitable relief from judgments obtained by fraud.

A. *MARSHALL V. HOLMES* REMAINS GOOD LAW.

In *Marshall v. Holmes*, 141 U.S. 589 (1891), this Court squarely addressed whether a federal court could hear an action seeking to enjoin enforcement of a state-

court judgment obtained by fraud. The plaintiff alleged, as Petitioner does here, that the judgment was procured through forged documents and perjured testimony. This Court held that the federal court had jurisdiction:

This holding confirms that an action to prevent a party from benefiting from a fraudulent judgment is an exercise of original, not appellate, jurisdiction. The Tenth Circuit's Rooker–Feldman doctrine, if applied to bar such actions in Colorado, effectively treats *Marshall* as if it were silently overruled even though *Exxon Mobil* identified *Rooker* and *Feldman* as the only two cases squarely applying that rule, and did not disturb *Marshall*.

B. *HAZEL-ATLAS* DEFINES "FRAUD ON THE COURT."

In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), this Court defined the contours of fraud on the court. The case involved a patent judgment obtained through a fabricated article presented to the Patent Office and the courts. This Court held that federal courts have the inherent power to set aside such judgments to preserve the integrity of the judicial process: "Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public...." Id. at 246.

Petitioner alleges that Respondents' counsel were

complicit in the fabrication and backdating of evidence conduct that, under *Hazel-Atlas* and Tenth Circuit precedent such as *Weese v. Schukman*, 98 F.3d 542 (10th Cir. 1996), constitutes fraud on the court. A jurisdictional regime that declares federal courts powerless to hear such claims in Colorado is irreconcilable with *Hazel-Atlas*'s insistence that courts must have tools to protect themselves from being used as instruments of fraud.

III. RESPONDENTS' CORRUPTION OF THE JUDICIAL PROCESS CONSTITUTES "STATE ACTION" UNDER 42 U.S.C. § 1983.

Petitioner also asserts a claim under 42 U.S.C. § 1983, alleging that Respondents' fraudulent use of Colorado's judicial and enforcement machinery is being used to deprive her of property without due process. While private parties are generally not state actors, this Court has long recognized that private litigants can act "under color of" state law when they corrupt or commandeer state processes.

A. THE "JOINT PARTICIPATION" DOCTRINE OF *LUGAR*.

In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), this Court held that a private party's invocation of state prejudgment attachment procedures constituted state action where the party acted "jointly" with state officials in seizing property. The Court articulated a two-part test: the deprivation must be caused by the exercise of a state-created right, and the party charged must be a state actor.

Here, Respondents utilized and corrupted the coercive power of the Colorado courts to seize Petitioner's property. While mere use of the courts does not automatically create state action, the **corrupt** use of the courts transforms the relationship. By fabricating evidence, suppressing exculpatory recordings, and misleading the court into issuing a judgment it would not otherwise have entered, Respondents effectively co-opted the state's power. They did not simply avail themselves of neutral procedures; they **manipulated** those procedures to achieve an outcome the law would not permit.

That manipulation renders them "joint participants" with the state officials who subsequently enforced the fraudulent judgment.

B. *DENNIS V. SPARKS* AND THE CORRUPT CONSPIRACY.

In *Dennis v. Sparks*, 449 U.S. 24 (1980), this Court held that private parties who conspire with a judge to issue an injunction act under color of state law, even if the judge is immune. The Court reasoned that "private parties who corruptly conspire with a judge in connection with such conduct are ... acting under color of state law." Id. at 29.

Petitioner alleges a constructive conspiracy: by feeding the court fabricated evidence and creating a comedy of harmful errors, Respondents and their counsel induced the judge to act as their unwitting agent. Whether the judge was a willing participant (as in *Dennis*) or an unwitting instrument (as here) is a distinction without

a constitutional difference from the victim's perspective. The result is the same: the power of the State is deployed to strip a citizen of rights based on a lie. When attorneys, as officers of the court, participate in this fraud, the "color of law" requirement is satisfied. See *Tower v. Glover*, 467 U.S. 914 (1984).

C. JUDICIAL ENFORCEMENT OF FRAUD VIOLATES *SHELLEY V. KRAEMER*.

Under *Shelley v. Kraemer*, 334 U.S. 1 (1948), judicial enforcement of private agreements can itself constitute state action if it results in constitutional violations. While *Shelley* arose in the context of racial discrimination, its principle applies more broadly: when a state court knowingly (or constructively) enforces a private arrangement that violates constitutional rights, the State has become a party to that violation.

By entering and enforcing a judgment resting on fabricated evidence, and by refusing to revisit that judgment in the face of proof of fraud, the State of Colorado placed its imprimatur on Respondents' conduct. The malfeasance of Wine and his counsel became the act of the State when the court converted their fraud into a binding judgment and a vehicle for seizing Petitioner's home.

IV. THE INTEGRITY OF THE FEDERAL COURTS DEMANDS A REMEDY FOR "FRAUD ON THE COURT."

The independent action in equity preserved by Federal

Rule of Civil Procedure 60(d) exists as a failsafe to prevent the "unconscionable" enforcement of judgments obtained by fraud on the court. A jurisdictional regime that bars such actions in cases like this leaves federal courts unable to police the integrity of the justice system itself.

A. THE "COMEDY OF ERRORS" WAS A DUE PROCESS VIOLATION.

The "comedy of harmful errors" that unfolded in the trial court is not merely a colorful turn of phrase; it describes a breakdown of due process. A trial in which one side fabricates evidence, suppresses exculpatory proof, and then invokes doctrines of finality to shield that misconduct is not a "fair trial in a fair tribunal." *In re Murchison*, 349 U.S. 133 (1955). It is a sham.

Respondents' conduct turned the state-court proceeding into a mechanism for theft, not adjudication. The refusal of state courts to revisit that result, and the reality that any independent federal action challenging the fraud would be dismissed under the Tenth Circuit's Rooker Feldman doctrine, leaves Petitioner with a constitutional right but no remedy.

B. FEDERAL EQUITY POWER MUST REMAIN AVAILABLE.

The fraud-on-the-court doctrine exists because some misconduct is so egregious that it threatens the legitimacy of the judiciary itself. See *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). If Rooker–Feldman bars all review of state judgments even those obtained

by the grossest fraud in circuits like the Tenth, then the judicial power of the United States is subordinated to the schemes of private actors who can commandeer state courts.

That cannot be the law. As *Marshall* recognized, It is "against conscience" to allow a party to retain the benefits of a judgment obtained by fraud. 141 U.S. at 596.

This Court should reaffirm that principle and make clear that Rooker–Feldman does not extinguish the federal courts' equitable power to remedy fraud on the court.

V. THE JUDGMENT AND FEE AWARD VIOLATE THE DUE PROCESS AND TAKINGS CLAUSES OF THE FOURTEENTH AMENDMENT

The state-court actions in this case transcend mere legal error and rise to the level of an arbitrary, conscience-shocking deprivation of property.

A. THE MISAPPLIED "FIRST-TO-BREACH" ANALYSIS CONFIRMS THE DUE PROCESS AND JUDICIAL-TAKINGS PROBLEMS AT THE HEART OF THIS CASE.

The Colorado courts' treatment of the Settlement Agreement's allocation of duties illustrates how Respondents' fraud metastasized into constitutional injury. The Agreement is explicit about when duties

arise. Paragraph 2 ties Wine's obligation to release the Deed of Trust to the recording of the quitclaim deeds transferring the four rental properties to him: "Upon recording of the Quit Claim Deeds, Wine shall release the DOT and deem the Note paid in full." Settlement Agreement ¶ 2, App. C. Paragraph 3 then provides that "Wine shall be entitled to all rental income on the Properties effective October 1, 2018," and that he "shall be liable for all costs and expenses related to the Properties effective October 1, 2018." Id. ¶ 3, App. C. Before October 1, there was no contractual entitlement to rents in Wine's favor, and no duty in Petitioner to treat rent collected as Wine's property.

The trial court's March 9, 2020 summary-judgment order nonetheless granted partial summary judgment to Wine based on a "first to breach" narrative: it found that Conquest collected October 2018 rents "a few days prior" to October 1, 2018 and did not remit them to Wine, and that this constituted a breach, while also holding that Wine had "no duty" under the Agreement to release the Deed of Trust on the Arapahoe property. Summ. J. Order ¶¶ 6(d), 7–9, 31–34, App. D. That finding is precisely what Petitioner contends was manufactured and maintained through fabricated mortgage payment evidence and suppression of exculpatory recordings from the servicer.

On appeal, the Colorado Court of Appeals recognized that the trial court erred in holding that Wine had no duty to release the Deed of Trust, but treated this as "harmless" because, in its view, Petitioner was still "first to breach" by virtue of rent collection before October 1:

"But even assuming he was required to do so on October 1, 2018, as Weiman argues, it is undisputed that Conquest collected the October 2018 rents, in violation of the settlement agreement, 'a few days prior' to October 1. Accordingly, Wine's failure to release the Wine DOT on October 1 cannot support Weiman's argument that Wine breached the settlement agreement first." *Wine*, ¶ 39.

That reasoning misapprehends Colorado contract law. Under settled doctrine, a party cannot breach a duty that has not yet arisen. See *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992); *Stan Clauson Assocs., Inc. v. Coleman Bros. Constr., LLC*, 297 P.3d 1042, 1049 (Colo. App. 2013); see also C.R.S. § 13-80-108(4) (a cause of action accrues when the breach occurs). Here, Wine's contractual entitlement to rents and his obligation to release the DOT both attach as of October 1, 2018, not "a few days prior." Settlement Agreement ¶¶ 2–3, App. C. Treating alleged pre–October 1 rent collection as a breach retroactively re-writes the parties' bargain.

More fundamentally, the "first to breach" finding is inseparable from the corrupted evidentiary record. The trial court relied on Wine's affidavit regarding the October 2018 mortgage payments and refused to consider newly discovered bank metadata and a sworn affidavit from a branch operations manager indicating that the checks were not processed until December 2018 evidence consistent with Petitioner's contention that the checks were back-dated to create the illusion of timely performance. See *Wine*, ¶¶ 43–48. The Court of Appeals endorsed that refusal and, again, deemed

any error harmless. *Id.* ¶ 47.

This fraudulently induced, misapplied "first-to-breach" analysis produced an arbitrary and irrational deprivation of property the very evil the Due Process and Takings Clauses are meant to prevent.

The respondents' fraudulent conduct induced the lower and higher courts to engage in this misapplication of state law and misallocate contractual blame; it is the hinge upon which the entire deprivation of property turns. The "first-to-breach" determination was used to:

> (1) suppress exculpatory evidence and extinguish Petitioner's counterclaims and defenses;
>
> (2) uphold a judgment enforcing a fee award that contradicts Paragraph 4 of the Agreement;
>
> (3) justify the continued threat of execution on Petitioner's home and equity pursuant to the November 12, 2024 **Fee Order**.

The combined effect is not a mere error in contract interpretation; it is a structural skewing of the record and legal framework to preserve a judgment procured through fabricated financial instruments and faked performance. The result has created a constitutional paradox. Petitioner faces loss of her home due to the trial court's awarding a $442,056.60 attorney's-fee judgment that necessarily rests on the premise that her litigation position was frivolous or unjustified, yet the Court of Appeals denied Respondents' request for appellate fees under § 13-17-102(2), declaring that

Petitioner's appeal challenging that judgment was neither frivolous nor lacking substantial justification. Wine, ¶¶ 56–57. This internal inconsistency underscores why this case transcends ordinary legal error and raises serious Due Process concerns.

B. PROCEDURAL DUE PROCESS: A MEANINGLESS OPPORTUNITY TO BE HEARD.

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner's opportunity was rendered meaningless by Respondents' extrinsic fraud.

When a party fabricates evidence and suppresses the truth, the adversarial process is hollow. The state courts' subsequent refusal to look behind the supposed "finality" of the judgment to cure that fraud ratified the violation, depriving Petitioner of her property without the basic procedural safeguards the Constitution demands.

C. SUBSTANTIVE DUE PROCESS: ARBITRARY AND CAPRICIOUS DEPRIVATION.

The trial court's own summary-judgment order underscores the arbitrariness of the later fee award. In March 2020, the court correctly recited the American Rule: "In the absence of a specific statute, court rule, or contract provision to the contrary, attorney fees are not recoverable by a prevailing party in a contract or

tort action." Summ. J. Order ¶ 44 (quoting Wheeler, 74 P.3d at 503), App. D.It then identified C.R.S. § 13- 17-102 as a narrow statutory exception, explaining that fees may be shifted only when a claim "lacked substantial justification," defined as "substantially frivolous, substantially groundless, or substantially vexatious." Id. ¶¶ 45–50 (quoting § 13-17- 102(4)), App. D.

Yet in the November 12, 2024 **Fee Order**, the court abandoned its own "roadmap." Instead of making explicit findings that any particular claim or defense asserted by Petitioner was substantially frivolous, groundless, or vexatious, the court:

- adopted Plaintiffs' lodestar calculation wholesale;
- praised counsel's billing rates as consistent with Denver commercial-litigation markets;
- walked through the eight factors in Rule 1.5 of the Colorado Rules of Professional Conduct (time and labor, novelty, customary fee, amount in controversy, etc.); and
- awarded **$442,056.60** in fees and **$19,299.06** in costs as globally "reasonable." Fee Order at 5–9, App. B.

Nowhere does the Fee Order identify which of Petitioner's claims or defenses supposedly lacked substantial justification, nor does it separate time spent responding to allegedly frivolous filings from time spent litigating issues on which Wine either lost

or merely prevailed in the ordinary course. The court thus converted a narrow, sanction-like fee-shifting statute into a de facto "prevailing party recovers all fees" regime directly at odds with Colorado law, with Paragraph 4 of the Settlement Agreement, and with the American Rule.

Petitioner's direct appeal from the Fee Order was dismissed on timeliness grounds, so no Colorado appellate court has ever reviewed whether the statutory predicates for fees were satisfied or reconciled the Fee Order with the parties' contract and the American Rule. At the same time, in a separate appeal from the underlying judgment, the Colorado Court of Appeals expressly declined to deem Petitioner's position frivolous, rejecting Wine's request for appellate fees and holding that the appeal was not frivolous or lacking substantial justification. *Wine*, ¶¶ 56–57. The result is an unmoored transfer of wealth from one private party to another, orchestrated by the judiciary without lawful justification and without meaningful appellate review.

The award of approximately $442,000 in attorney's fees is an arbitrary exercise of state power that shocks the conscience. See *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). It

(1) contradicts the parties' express contract (Paragraph 4),

(2) violates the American Rule on attorney's fees, and

(3) disregards the mandatory statutory predicates and findings required by C.R.S. §§ 13-17-102 and -103.

That combination is precisely the kind of irrational, result-driven adjudication that substantively violates the Due Process Clause.

D. JUDICIAL TAKING: THE SEIZURE OF EQUITY.

In *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, this Court recognized that when a state court "declares that what was once an established right of private property no longer exists," it can effect a taking every bit as real as a legislative or executive action. 560 U.S. 702, 715 (2010). The Constitution does not permit the government to do indirectly, through judicial redefinition or misapplication of law, what it could not do openly by statute: simply confiscate private property without just compensation.

That is what happened here. Petitioner's equity interest in her home and related properties was secured and structured by the June 1, 2017 Promissory Note, the Deed of Trust, and the September 19, 2018 Settlement Agreement, which expressly required Wine to release the Deed of Trust upon recording the quitclaim deeds and expressly provided that each party would bear its own attorney's fees and costs. By later enforcing a $442,056.60 attorney-fee award and $19,299.06 in costs against Petitioner **contrary to the Settlement Agreement, the American Rule, and**

the statutory predicates in C.R.S. § 13-17-102 the state court effectively converted Petitioner's equity into a windfall for Respondents. That reallocation of value is not grounded in neutral application of contract or fee-shifting law; it is the product of a fraud-corrupted record and a fee order that ignores the governing standards.

E. EQUAL PROTECTION: "CLASS OF ONE."

Petitioner has been singled out for irrational and discriminatory treatment. While similarly situated litigants in Colorado are protected by the American Rule and by the fee-allocation terms of their contracts, the state court imposed a crushing fee award on Petitioner without rational basis.

Under the "class-of-one" doctrine, a plaintiff can prevail by showing that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). There is no rational governmental interest in forcing a fraud victim to pay the legal fees of the perpetrator particularly where the appellate courts themselves have acknowledged that the victim's claims were not frivolous.

VI. THE EXECUTION OF A FRAUDULENT JUDGMENT CONSTITUTES "STATE ACTION" AND AN UNREASONABLE SEIZURE UNDER THE FOURTH AMENDMENT

The enforcement of the fee award against Petitioner's home triggers Fourth Amendment scrutiny. What is being enforced is not a neutral money judgment arising from a fair adversarial process, but a $442,056.60 attorney-fee award and $19,299.06 cost award entered on a fraud-corrupted record and now being executed against Petitioner's residence and equity **through the November 12, 2024 [Amended] Order Re Plaintiffs Alyn Wine and Wine Properties, LLC Request for Attorneys' Fees and Costs ("Fee Order")**. See Fee Order at 8–9, App. B

A. "JOINT PARTICIPATION" CREATES STATE ACTION.

As in *Lugar*, Respondents became state actors when they willfully participated in the joint activity of using state mechanisms to seize property. Here, they did so not by invoking neutral procedures in good faith, but by corrupting those procedures with fabricated evidence and suppressed exculpatory material. By inducing the trial court to enter a fee judgment it had no lawful basis to impose and then pursuing execution on Petitioner's home under that judgment, Respondents transformed what should have been a neutral judicial process into a vehicle for private confiscation cloaked in state authority.

B. THE SEIZURE IS "UNREASONABLE."

A seizure of property based on a judgment void for fraud is, by definition, unreasonable. *Soldal v. Cook County*, 506 U.S. 56 (1992). If the underlying judgment is the "fruit of the poisonous tree"—procured through fabrication of evidence, suppression of exculpatory proof, and systemic misapplication of law then the State's execution of that judgment against Petitioner's home would violate the Fourth Amendment. That is precisely the posture here: Colorado's enforcement machinery is being deployed to levy on Petitioner's residence and equity **pursuant to the November 12, 2024 Fee Order**, even though the fee award itself contradicts the Settlement Agreement, the American Rule, and the statutory predicates in C.R.S. § 13-17-102. The State cannot lend its police power to the enforcement of a fraud and still claim the resulting seizure is "reasonable" within the meaning of the Fourth Amendment.

VII. THE FEE AWARD IS AN EXCESSIVE FINE

Although the Excessive Fines Clause traditionally applies to government-imposed penalties, the $442,056.60 fee award here imposed by the **November 12, 2024 Fee Order** under color of state statute functions as a punitive sanction, not a compensatory award. *See Timbs v. Indiana*, 139 S. Ct. 682 (2019). The structure and content of the **Fee Order** confirm its punitive character:

- It is not keyed to any contractual fee-shifting

clause (indeed, Paragraph 4 of the Settlement Agreement forbids fee-shifting);

- It is not limited to work on any particular claim or defense that was found to be abusive or unjustified;

- It is imposed in the absence of any express finding that Petitioner's claims or defenses were "substantially frivolous, substantially groundless, or substantially vexatious" under C.R.S. § 13-17-102; and

- It functions to punish Petitioner for litigating at all, while richly rewarding the party whose fabrication of evidence and suppression of exculpatory material corrupted the proceedings.

Given that the award contradicts the parties' contract, lacks the statutory findings of frivolousness, and serves only to punish Petitioner while rewarding Respondents' fraud, it is grossly disproportionate to any "offense" (defending a lawsuit and seeking redress) and violates the Eighth Amendment's prohibition on excessive fines.

7. CONCLUSION

The doctrinal regime applied below leaves Petitioner and all citizens in the Tenth Circuit with no federal remedy for state-court judgments procured by extrinsic fraud. It entrenches a circuit split that incentivizes forum shopping and undermines confidence in the judiciary by making the *success* of a litigant's deceit

the very source of their immunity from federal review. That abstract problem now has a concrete, chilling embodiment: the November 12, 2024 **[Amended] Order Re Plaintiffs Alyn Wine and Wine Properties, LLC Request for Attorneys' Fees and Costs**, which converts more than $442,000 of Petitioner's home equity into a fee award for the very party who fabricated performance, suppressed exculpatory evidence, and misled the trial court.

This Court should grant certiorari to:

- Clarify that **Rooker–Feldman** does not bar independent actions for extrinsic fraud and fraud on the court;

- Reaffirm the vitality of ***Marshall v. Holmes*** *and* ***Hazel-Atlas***, and the federal courts' inherent power preserved in Rule 60(d) to deny effect to judgments obtained by "tampering with the administration of justice";

- Confirm that private parties who commandeer state judicial machinery through fabrication and suppression of evidence act under color of state law for purposes of **42 U.S.C. § 1983**, and that the execution of a fraud-tainted fee judgment against a primary residence is both an unreasonable seizure and, where grossly disproportionate and untethered to any lawful obligation, an excessive fine; and

- Ensure that the Constitution's guarantees of Due Process, equal protection, meaningful access to

the courts, and protection against arbitrary deprivations of property are not nullified by procedural doctrines that elevate "finality" over legitimacy.

At bottom, this Petition does not ask the Court to sit as a super state court of error or to reweigh ordinary factual disputes. It asks the Court to address a judgment that, if left undisturbed, would make the State of Colorado an unwitting instrument of private fraud and convert the federal Constitution into a set of rights without remedies. The November 12, 2024, Fee Order operationalizes that fraud: it is the mechanism by which a corrupted record, a misapplied "*first-to-breach*" theory, and a fee award untethered to contract or statute will be executed against Petitioner's home.

When state and federal courts invoke Rooker Feldman to decline even to examine whether such a judgment rests on "fraud on the court," the constitutional guarantees of Due Process, the right to petition, protection against unreasonable seizures, and the prohibition on excessive fines become hollow promises. This Court's intervention is necessary to ensure that the judicial power of the United States is not subordinated to judgments obtained by deceit and enforced through the November 12, 2024, Fee Order.

DATED THIS 9th DAY OF FEBRUARY 2025

Respectfully submitted,

/s/
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