No. 25-197

IN THE
Supreme Court of the United States

T.M.,
Petitioner,

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION, ET AL..

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

BRIEF OF *AMICI CURIAE* CYRUS SANAI ROSHAN IN SUPPORT OF PETITIONER T.M.

FRANCES L. DIAZ
SB#159837
LAW OFFICES OF FRANCES L. DIAZ
8306 WILSHIRE BOULEVARD, #263
BEVERLY HILLS, CALIFORNIA 90211
(310) 927-5086
FRANCESDIAZ@FRONTIER.COM

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INTERESTS OF AMICUS CURIAE[1]

Amicus Cyrus Sanai is California attorneys who individually and jointly has challenged California attorney discipline proceedings. This Court denied petitions for certiorari they filed earlier this year in *Roshan v. Lawrence*, Case No. 24-586 and *Sanai v. U.S. Court of Appeals for the Ninth Circuit*, Case No. 25-196. Shortly thereafter, this Court issued *Williams v Reed*, 145 S.Ct. 465 (2025), a decision which holds that administrative proceedings which grant the *Ex Parte Young* defendants immunity under state law applicable in state court violate the Supremacy Clause. Sanai has ongoing lawsuits against *Ex Parte Young* defendants in federal court relying upon *Williams v. Reed*, *supra*, but has been stymied by the refusal of the courts in the Ninth Circuit to properly apply this Court's precedent interpreting the *Rooker-Feldman* doctrine, particularly *Reed v. Goertz*, 143 S.Ct. 955 (2023) ("*Reed*"). While Mr. Sanai's challenges in district courts and Court of Appeals were ongoing, the Ninth Circuit issued a published decision in which it rejected the correct interpretation of the *Rooker-Feldman* doctrine and held that a legal challenge to a tax foreclosure sale - indistinguishable from the challenge of Petitioner Pung *Pung v. Isabella County, Mich.*, No. 25-95 ("*Pung*") - was outside of the jurisdiction of the federal courts under the *Rooker-*

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[1] No part of this brief was written by counsel for any party. No party, or any other person or entity other than Amicus, monetarily contributed to the preparation or submission of this brief.

Feldman doctrine. *See Searle v. Allen*, 148 F.4th 1121 (9th Cir. 2025) ("*Searle*"). "). Peyman Roshan ("Roshan"), another California attorney similarly challenging California attorney disciplinary proceedings, sought to intervene in *Searle* order to have the Ninth Circuit correct its error, but was denied. He has submitted a petition for a writ of certiorari challenging that denial that has not yet been assigned a docket number.

This Counsel filed an amicus brief in *Pung* on behalf of Sanai and Roshan which pointed out the Ninth Circuit's jurisdictional ruling (which might be raised independently by this Court) so that this Court can correct the Ninth Circuit's repeated refusal to properly apply the doctrine and prevent the lower courts from avoiding whatever resolution on the merits this Court reaches by applying the Ninth Circuit's fallacious case law.[2] Amici there also proposed a comprehensive test for the application of the *Rooker-Feldman* doctrine which, if adopted, will assist lower courts that are confused about its application. *See, e.g.*, *Gilbank v. Wood Cnty. Dep't of*

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[2] *Pung* is not the only case currently being heard by this Court where application of Ninth Circuit case law on the *Rooker-Feldman* doctrine would require dismissal of the action for lack of subject matter jurisdiction. The Ninth Circuit continues to apply case law which holds that interlocutory state court decisions concerning investigativke subpoenas trigger *Rooker-Feldman,* stripping federal courts of jurisdiction to hear lawsuits attacking such subpoenas in federal court. *See Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1029 (9th Cir. 2001). Application of this analysis would require dismissal of this Court's current case *First Choice Women's Resource Centers v. Platkin,* No. 24-781.

Hum. Servs., 111 F.4th 754, 761 (2024)(en banc)("*Gilbank*").

But Sanai has two more discrete interests. After *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280 (2005) ("*Exxon Mobil*"), the first Court to address the question presented was the First Circuit in *Federación de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17 (1st Cir. 2005). The Ninth Circuit followed suit in *Mothershed v. Justices of the Supreme Court,* 410 F.3d 602 (9th Cir. 2005) ("*Mothershed*"), explicitly adopting the *Federación* test in an amended version of *Mothershed* in 2005. Sanai was the person responsible for this change; he filed post-judgment letters and briefs and caused plaintiff Mothershed to file a petition for rehearing. This was because the Ninth Circuit had dismissed appeals under a decision sub nom *Sanai v. Sanai* that relied upon *Doe & Assocs. Law Offices v. Napolitano,* 252 F.3d 1026 (9th Cir. 2001). *See Sanai v. Sanai,* 141 Fed.Appx. 677 (9th Cir. 2005). In that decision, the panel held that "*Rooker-Feldman* applies to the interlocutory orders at issue in this case…..*Doe and Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001)", citing also to the original version of *Mothershed.* Sanai succeeded in forcing Circuit Judge Beezer and his colleagues to formally acknowledge the correct interpretation of *Rooker-Feldman* as to interlocutory orders in *Mothershed,* but the Ninth Circuit simply relied on its practice of anti-precedent to reject every single attempt to rely upon the correction interpretation in *Sanai v. Sanai* and all following cases. This was intentional in Sanai's case, because Circuit Judge Beezer was on

the panel of both *Sanai v. Sanai* and *Mothershed*. Sanai raised this issue to this Court petition for certiorari filed *sub nom. Sanai v. Sanai,* Docket No. 05-991, which was denied.

Ninth Circuit precedent recognizes Fed. R. Civ. P. 60(b)(6) motions to vacate a judgment based on change in law, particularly where the party argued the particular change in law up to this Court unsuccessfully. *Henson v. Fidelity Nat'l Fin., Inc.,* 943 F.3d 434, 443-44 (9th Cir. 2019) and *Phelps v. Alameida,* 569 F.3d 1120 (9th Cir. 2009). Accordingly, Sanai has a legally recognizable interest in this case to persuade this Court that *Rooker-Feldman* does not apply to interlocutory orders in ongoing state-court litigation. However, because of the Ninth Circuit's established record of ignoring precedent in the *Rooker-Feldman* area, his interest requires this Court to explicitly identify and overturn the unpublished anti-precedent beginning with *Sanai v. Sanai* and continuing through the cases identified in *CMSL*, *supra*, and thereafter. The key Ninth Circuit precedent that was overturned, *Doe & Associates Law Offices*, is to this day treated as good law in unpublished dispositions. *See, e.g.*, Order of Dismissal, *Abera v. San Diego Pacificvu LLC*, Case No. 25-cv-01937-RBM-DEB (S.D.CA August 18, 2025) slip. op. at 4 ("under the *Rooker-Feldman* doctrine, federal courts are deprived of jurisdiction to hear appeals to final, and non-final, orders and judgments issued by a state court. *See Doe & Assoc. Law Offices v. Napolitano,* 252 F.3d 1026, 1030 (9th Cir. 2001)"); *see also* Order of Dismissal, *Kleidman v. Lui,* Docket No. 2:25-cv-02718-PA-JDE (C.D. CA April 14, 2025) slip. op. at 4 ("The *Rooker-Feldman*

doctrine applies not only to final state court orders and judgments, but also to interlocutory orders and non-final judgments issued by a state court. *Doe & Assocs. Law Offices v. Napolitano,* 252 F.3d 1026, 1030 (9th Cir. 2001); *Worldwide Church of God v. McNair,* 805 F.2d 888, 893 n.3 (9th Cir. 1986)").

This amicus brief is unusual in that Mr. Sanai has in pro per submitted a motion to intervene in this case. According to the United States Post Office, the motion was picked up by the Clerk on January 12, 2026. However, it has not been docketed as of the afternoon of January 20, 2026 and Mr. Sanai's telephone calls to the Clerk's office on January 15, 16, and 20, 2026 have not been returned. Accordingly, this amicus brief is being filed to ensure that Mr. Sanai has his say. To the extent that consideration of Mr. Sanai's motion to intervene in his pro per capacity requires consent of counsel or cessation of counsel's representative status, this brief includes such consent or notice of termination.

INTRODUCTION

Petitioner T.M. presented to this Court a generally accurate portrait of the confusion and disarray regarding the application of the *Rooker-Feldman* doctrine*,* as:

> the doctrine has caused "much mischief" over the years, "creating needless complications" and "distracting litigants and courts from the properly presented federal issues at hand." *VanderKodde v. Mary Jane M. Elliott, P.C.,* 951 F.3d 397, 405 (6th Cir. 2020) (Sutton, J., concurring).

….
After the Court's decision in *Feldman*, the obscure jurisdictional principle applied there and in *Rooker* proliferated in the lower courts. According to one commentator, *Rooker-Feldman* grew to become the "primary docket-clearing workhorse for the federal courts." Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating Its Jurisdictional Status*, 74 Notre Dame L. Rev. 1175, 1175 (1999). In turn, differing understandings of the doctrine developed, generating "confusion and debate" concerning its proper application. *Lance v. Dennis*, 546 U.S. 459, 467 (2006) (Stevens, J., dissenting).
…
Many believed that the Court's decision in *Exxon Mobil* had "finally interred" the *Rooker-Feldman* doctrine. *Lance*, 546 U.S. at 468 (Stevens, J., dissenting); see, *e.g., Hunter v. McMahon*, 75 F.4th 62, 68 (2d Cir. 2023); Suzanna Sherry, *Logic Without Experience: The Problem of Federal Appellate Courts*, 82 Notre Dame L. Rev. 97, 121 (2006); Samuel Bray, *Rooker Feldman* (1923-2006), 9 Green Bag 317, 317-318 (2006). In the two decades since *Exxon Mobil* was decided, this Court has rejected requests to apply it. See, *e.g., Skinner v. Switzer*, 562 U.S. 521, 531-532 (2011); *Lance,* 546 U.S. at 466.
….

Despite this Court's efforts to cabin *Rooker-Feldman* in *Exxon Mobil*, the

> doctrine soon went "back to its old tricks" of "interfering with efforts to vindicate federal rights and misleading federal courts into thinking they have no jurisdiction over cases Congress empowered them to decide." *VanderKodde*, 951 F.3d at 405 (Sutton, J., concurring).
>
> ….
>
> Still, *Rooker-Feldman* "harasses litigants and courts to this day." *VanderKodde*, 951 F.3d at 407 (Sutton, J., concurring). In some circuits, "application of the doctrine has only grown" since *Exxon Mobil*. *Hadzi-Tanovic v. Johnson*, 62 F.4th 394, 410 (7th Cir. 2023) (Kirsch, J., dissenting from the denial of rehearing en banc). Empirical data from the district courts supports that conclusion. See Raphael Graybill, Comment, *The Rook That Would Be King: 'Rooker-Feldman' Abstention Analysis After 'Saudi Basic*,' 32 Yale J. on Reg. 591, 592 (2015).

T.M. Pet. for Cert. at 1-8. (paragraphs reordered).

T.M.'s reply brief in support of his petition echoes these sentiments, correctly stating that "[d]espite this Court's previous attempts to rein in *Rooker-Feldman*, the doctrine continues to befuddle lower courts and litigants alike." *T.M.* Cert. Reply at 11. T.M. is not the only petitioner to have brought Circuit Judge Sutton's concurrence specifically, or the Courts of Appeals *Rooker-Feldman* flummox generally, to the attention of this Court. The plaintiff in *Gilbank*, *supra*, unsuccessfully sought this Court's intervention as follows:

> Despite this Court's best efforts to "confine[ ]" and clarify *Rooker-Feldman* in 2005, *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005), since then the doctrine "has been invoked in tens of thousands of circuit and district court decisions," App.15a, and is "back to its old tricks of interfering with efforts to vindicate federal rights and misleading federal courts into thinking they have no jurisdiction over cases Congress empowered them to decide," *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 405 (6th Cir. 2020) (Sutton, J., concurring). Discord dominates in the lower courts, and "all members" of the fractured en banc Seventh Circuit below "agree[d]" there is "a need for the Supreme Court to clarify application of the doc trine." App.3a.

Gilbank v. Wood Cnty. Dep't of Hum. Servs., Pet. for Cert. Docket No. 22-1037 at 2.

While T.M. has diagnosed the illness, she first proposes a partial treatment: clarification of one of the many aspects of the *Rooker-Feldman* doctrine that split the circuits, and in the alternative the abolition of the *Rooker-Feldman* doctrine. Sanai endorses the excision of *Rooker-Feldman*, but in the alternative prescribes a full cure: a multi-step test that accurately reflects the Court's binding precedent before *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("*Rooker*"), between *Rooker* and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983) ("*Feldman*"), and thereafter up to this Court's most recent application in *Reed v. Goertz*, 143 S.Ct. 955

(2023) ("*Reed*"), as well as providing better grounds for complete abolition of the *Rooker-Feldman* doctrine. However, this Court's consideration of a radical redirection of this case would violate the party presentation principle, unless this Court makes Sanai a party. *United States v. Sineneng-Smith,* 590 U.S. 371, 375 (2020).

T.M.'s highly experienced counsel spins a tale whereby since the publication of *Exxon Mobil,* ten circuits have addressed the question presented: the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eight, Tenth and Eleventh, and a clear break only appeared in the Sixth Circuit's opinion of *RLR Invs., LLC v. City of Pigeon Forge,* 4 F.4th 380 (6th Cir. 2021) ("*RLR*"), followed by the Fourth Circuit in this action. The brief on the merits avoids discussion of the Circuit's differences on *Rooker-Feldman*.

Respondents' equally experienced counsel does not contradict the Petitioner's characterization of the Circuits' treatment of the question presented. However, as in "The Adventure of Silver Blaze", there is a major clue that this tale is a falsehood, the dog that allegedly has not barked: the Ninth Circuit. *See* Doyle, Arthur Conan, "The Adventure of Silver Blaze," *The Strand Magazine,* Dec. 1892. How did the biggest circuit in the nation avoid addressing the question presented since 2005?

The answer, of course, is that it did not avoid it, indeed it immediately followed the First Circuit in addressing the question presented after *Exxon Mobil*. Moreover, the Ninth Circuit addressed the issue because Sanai forced the issue with post-publication filings in *Mothershed*.

Sanai's efforts, though successful in obtaining recognition of the correct rule, was nugatory in his and all later cases. Judge Ishii some years later accurately if incompletely summarized the Ninth Circuit's treatment of this issue:

> In 2001, the Ninth Circuit held that *Rooker-Feldman* applies to interlocutory orders. *See Doe & Assocs. Law Offices v. Napolitano,* 252 F.3d 1026, 1030 (9th Cir. 2001) (approving of *Richardson v. D.C. Ct. of App.*, 83 F.3d 1513, 1515 (D.C. Cir. 1996)). In 2005, relying on *Exxon Mobil Corp. v. Saudi Basic Indust. Corp.*, 544 U.S. 280 (2005), the Ninth Circuit stated that *Rooker-Feldman* only applies after state court proceedings have ended, i.e. "when the state courts finally resolve the issue that the federal court plaintiff seeks to relitigate in a federal forum. . . ." *Mothershed*, 410 F.3d at 607 n.3 (amended opinion). After 2005, however, the Ninth Circuit in several unpublished cases cited *Doe & Assocs.* for the proposition that *Rooker-Feldman* applied to interlocutory orders. *See, e.g., Hanson v. Firmat*, 272 Fed. Appx. 571, 572 (9th Cir. 2008); *Melek v. Kayashima*, 262 Fed. Appx. 784, 785 (9th Cir. 2007); *Bugoni v. Thomas*, 259 Fed. Appx. 11, 11-12 (9th Cir. 2007); *see also Ismail v. County of Orange*, 2012 U.S. Dist. LEXIS 65793, *25-*26 (C.D. Cal. Mar. 21, 2012); *cf. Marciano*, 431 Fed. Appx. at 613 (discussing only *Mothershed*).

CMLS Management, Inc. v. Fresno County Superior Court, No. 11-cv-1756-A WI-SKO, 2012 WL 2931407 (E.D. Cal. July 18, 2012) at *10 ("*CMLS Mgmt.*"); *see also Marciano v. White*, 431 Fed.Appx. 611 (9th Cir. 2011)(decision of circuit judges Silverman, Tallman and Clifton explicitly refusing to follow the amended *Mothershed* opinion precedent); *Santos v. Sup. Ct. Guam,* Case No. 15-16854 (9th Cir. mem. disp. Feb. 14, 2018)(a decision of Circuit Judges Ikuta, O'Scannlain and Clifton, upholding dismissal of challenge to interlocutory order while case was ongoing). Amicus therefore supports T.M.

The issue presented by *T.M.* has been the most brazen example of the Ninth Circuit's long-established practice of "anti-precedent", whereby the Circuit has one rule announced in published precedent that it disregards in unpublished dispositions. By unwritten Circuit rule these are never made subject to correction by en banc panels.

SUMMARY OF ARGUMENT

Petitioner fundamentally misconceives the *Rooker-Feldman* doctrine while correctly answering the question presented. *Rooker* was based on the originalist understanding of the "original jurisdiction" that federal courts were granted in the nineteenth century. *Feldman,* on the other hand, is based on power of the federal courts to determine that state statutes, rules and judgments are unconstitutional. Focusing on the negative implication of 18 U.S.C. §1257 leads courts astray because this negative implication is overridden in several areas such as habeas writs, bankruptcy proceedings and fraud on the courts.

Both petitioner and respondent declined to address the last two decades of brazen disregard fro the rules of stare decises committed by the Ninth Circuit when addressing the *Rooker-Feldman* doctrine. This is a serious defect, because it suggests that the lower court confusion can be rectified by incrementalist decisios from this Court every few decades.

The Court has two options to solve this problem. The radical solution is abolishing the doctrine completely. The Ninth Circuit's record of *Rooker-Feldman* jurisprudence strongly supports T.M.'s proposal. The second solution is the comprehensive test proposed by Sanai in this document and elsewhere.

ARGUMENT

A. The Ninth Circuit's *Rooker-Feldman* Analysis in the Takings and Other Contexts is Wrong.

1. The *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine is comprised of two separate propositions. The first is that the federal district court must adhere to the common-law understanding of "original jurisdiction" except as varied by Congress. *Rooker* at 416. The second, in *Feldman*, is that a district courts may invalidate directly or indirectly a state judgment if it is supported by a correct application of state or federal law which application violates the United States

constitution facially, on an overbreadth basis, or as applied. *Feldman*, *supra*.

"At its core, the *Rooker-Feldman* doctrine stands for the unremarkable proposition that federal district courts are courts of original, not appellate, jurisdiction. See 28 U.S.C. §§ 1331, 1332." *In re Gruntz*, 202 F. 3d 1074, 1078 (9th Cir. 2000)(en banc). This principle, the *Rooker* part of *Rooker-Feldman*, predates *Rooker*. Anticipating the *Rooker-Feldman* doctrine, this Court wrote in *Barrow v. Hunton,* 99 U.S. (9 Otto) 80 (1878) that:

> The question presented with regard to the jurisdiction of the Circuit Court is, whether the proceeding ... is or is not in its nature a separate suit, or whether it is a supplementary proceeding so connected with the original suit as to form an incident to it, and substantially a continuation of it. If the proceeding is merely tantamount to the common-law practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review or an appeal, it would belong to the latter category, and the United States court could not properly entertain jurisdiction of the case. Otherwise, the Circuit Courts of the United States would become invested with power to control the proceedings in the State courts, or would have appellate jurisdiction

> over them in all cases where the parties are citizens of different States. Such a result would be totally inadmissible.
>
> *On the other hand, if the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in Gaines v. Fuentes (92 U.S. [(2 Otto)] 10, 23 L.Ed. 524), the case might be within the cognizance of the Federal courts. The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State courts; and in the other class, the investigation of a new case arising upon new facts, although having relation to the validity of an actual judgment or decree, or the party's right to claim any benefit by reason thereof.*

Id. at 82-83 (emphasis added); see also *MacKay v. Pfeil*, 827 F.2d 540, 543-44 (9th Cir.1987) (quoting the above passage).

Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004) (italics in original), quoting *Barrow*, *supra*.

The respective scopes of original jurisdiction and appellate jurisdiction thus overlap in several areas. One overlap is fraud on the court. A second is jurisdiction. *In re Gruntz*, *supra*. Under common law, a court has the power to vacate another court's judgment if that other court lacked personal or subject matter jurisdiction. This was made explicit in *Rooker*:

> It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. 191 Ind. 141. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication.

Rooker at 415.

Rooker thus made valid jurisdiction a prerequisite to protecting a state court judgment. Just one year after *Rooker*, this Court made clear that federal district courts can entertain independent actions that attack state-court judgments as void. See *Atchison, T. & S. F. Ry. Co. v. Wells*, 265 U.S. 101 (1924). In *Atchison*, the plaintiff secured a default judgment over a railroad in Texas state court. *Id*. at 102. Once the railroad received notice of the action and judgment, it sued in federal court to enjoin enforcement of the state-court judgment. *Id*. The railroad argued that the state court lacked personal jurisdiction when it entered judgment. *Id*. at 102–03. This Court in *Atchison* agreed and held that "[r]elief against the void judgments entered was properly sought by the [railroad] in the federal court," and "[t]he [railroad] was not obliged to assert its rights in the courts of Texas." *Id*. at 103.

These principles fall directly from common law. However, in *Feldman*, this Court created a new exception to *Rooker* not present in common law: the "general attack" upon a rule or statute.

> To the extent that Hickey and Feldman mounted a general challenge to the constitutionality of Rule 461(b)(3), however, the District Court did have subject-matter jurisdiction over their complaints.
>
> .....
>
> Applying this standard to the respondents' complaints, it is clear that their allegations that the District of Columbia Court of Appeals acted

arbitrarily and capriciously in denying their petitions for waiver and that the court acted unreasonably and discriminatorily in denying their petitions in view of its former policy of granting waivers to graduates of unaccredited law schools, see n. 3, *supra*, required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case. These allegations are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions. The District Court, therefore, does not have jurisdiction over these elements of the respondents' complaints.

The remaining allegations in the complaints, however, involve a general attack on the constitutionality of Rule 461 (b)(3). See n. 3, *supra*. The respondents' claims that the rule is unconstitutional because it creates an irrebuttable presumption that only graduates of accredited law schools are fit to practice law, discriminates against those who have obtained equivalent legal training by other means, and impermissibly delegates the District of Columbia Court of Appeals' power to regulate the bar to the American Bar Association, do not require review of a judicial decision in a particular case. The District Court, therefore, has subject-

> matter jurisdiction over these elements of the respondents' complaints

Feldman at 486-7 (footnotes omitted).

The Ninth Circuit integrated *Rooker* and *Feldman* in *Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003)("*Noel*"). *Noel* presents a two-step test to determine whether (1) a federal plaintiff brings a forbidden de facto appeal of the state court decision, and, if so, (2) to bar from federal review any issue inextricably intertwined with the issues decided in the state case. The first step has two prongs: (i) a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and (ii) seeks relief from a state court judgment based on that decision. *Noel* was cited with approval by this Court in 2005. *Exxon Mobil* at 293.

The requirement that *Rooker-Feldman* applies only where a federal plaintiff "asserts as a legal wrong an allegedly erroneous decision" raises two possible interpretations. The first possible interpretation is that for *Rooker-Feldman* purposes, a decision is asserted as erroneous for its application of a state or federal statute or rule, which application is wrong under state or federal law (excluding unconstitutionality of the statute or rule); a decision that correctly applies state law or federal law (without reference to federal constitutionality) is not excluded from federal court jurisdiction attacking that statute or rule on an as-applied or facial basis. The second possible interpretation is that an as-applied violation of constitutional law for the application of state statutes or rules is barred under *Rooker-Feldman*, but an attack for facial

unconstitutionality, including overbreadth, is not barred.

The Ninth Circuit case law took the second interpretation; facial attacks are not barred, but as-applied attacks are. *See*, *e.g.*, *Scheer v. Kelly*, 817 F.3d 1183, 1186 (9th Cir. 2016).

This Court addressed this question indirectly two years after *Feldman* in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). This Court held that a person aggrieved by a state taking had to first exhaust all remedies provided under state law, and if the person was a "state court loser", his claims were ripe to proceed in federal court.

The question still remained, however, whether the federal court even had jurisdiction under *Rooker-Feldman* after the state-court loser finished in state court on an as-applied challenge. This Court did not directly address it until 2010 in *Stop the Beach Renourishment, Inc. v. Fla. Dept. of Env't. Prot.*, 560 US 702 (2010) ("*Stop the Beach*") where it applied the *Williamson County* takings ripeness test to pure judicial decisions, finding that "the Takings Clause bars *the State* from taking private property without paying for it, no matter which branch is the instrument of the taking. ... [A] legislative, executive, or judicial restriction of property use may or may not be [a taking], depending on its nature and extent. But the particular state actor is irrelevant." *Stop the Beach* at 715 (italics in original). But, for this right to attack judicial takings to be viable, it had to bypass the *Rooker-Feldman* doctrine. This Court held that *Rooker-Feldman* never applied; instead, as there was always district court jurisdiction for state court losers

to assert that state law procedures were inadequate, it was issue and claim preclusion that had to be overcome:

> Finally, the city and county argue that applying the Takings Clause to judicial decisions would force lower federal courts to review final state-court judgments, in violation of the so-called *Rooker-Feldman* doctrine. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). That does not necessarily follow. The finality principles that we regularly apply to takings claims, see *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186-194, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985), would require the claimant to appeal a claimed taking by a lower court to the state supreme court, whence certiorari would come to this Court. If certiorari were denied, the claimant would no more be able to launch a lower-court federal suit against the taking effected by the state supreme-court opinion than he would be able to launch such a suit against a legislative or executive taking approved by the state supreme-court opinion; the matter would be res judicata.

Stop the Beach at 729.

Stop the Beach received little attention on this point, perhaps because while it clearly set out that takings claims were not subject to *Rooker-Feldman*, there was no supporting reasoning.

Reed finally answered this issue. In *Reed* the appellant was granted partial relief, so his lawsuit was not and could not be a facial challenge. Citing *Skinner v. Switzer*, 562 U.S. 521 (2011), this Court in *Reed* articulated that under *Feldman* a federal challenge to the state court's application of a state law or rule that does not get the state law wrong may then be attacked in federal court on the grounds that the state law or rule is unconstitutional, either facially or as applied. *Reed* at 235.

In *Reed* the appellant was granted partial relief, so his lawsuit was not and could not be a facial challenge. Citing *Skinner*, *Reed* articulated that under *Feldman* a federal challenge to the state court's application of a state law or rule that does not get the state law wrong may then be attacked in federal court on the grounds that the state law or rule is unconstitutional, either facially or as applied.

The *Searle* panel cited the formulation of this rule in *Skinner* as follows:

> The Supreme Court emphasized this point in *Skinner v. Switzer* when it explained that "a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." 562 U.S. 521, 532 (2011).

Searle at 1133.

As to the question presented, the application of *Rooker-Feldman,* T.M. bases its argument on the contention that the *Rooker-Feldman* doctrine arises not because of the original jurisdiction vested in district courts, but because of the exclusive jurisdiction to review state court judgements vested in 28 U.S.C. §1257. The problem with this argument is that 28 U.S.C. §1257 does not strip the lower federal courts of the power to nullify state court judgments. Congress has vested this power in criminal matters involving confinement or death under the habeas corpus statute and in matters involving bankruptcy. See 28 U.S.C. §2254; 28 U.S.C. §157.

The correct analysis is to focus on what a federal court is being asked to do when a party seeks to invoke federal jurisdiction to interfere with an ongoing state proceeding. In such circumstances, a federal court is being asked to enter an anti-suit injunction. An anti-suit injunction was under English common law called a writ of prohibition, and it was issued from a court of general jurisdiction, the King's Bench (or in some years the Queen's Bench) to ensure that original jurisdiction cases were being handled in the correct court. Since England had many courts with sometimes overlapping jurisdiction, writs of prohibition were not uncommon. *See generally,* Gray, Charles Montgomery, "The Writ of Prohibition: Jurisdiction in Early Modern English Law, Vol. 1: General Introduction to the Study and Procedures." (2004). While some states such as California and Florida have writs of prohibition available to their courts, at the federal level the Courts have issued them as injunctions against

domestic and foreign proceedings. *See Dombrowski v. Pfister*, 380 U.S. 479 (1965) (state criminal prosecution); *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872 (9th Cir. 2012) (affirming injunction against German patent proceeding); *Royal Insurance Co. of America v. Quinn-L Cap. Corp.*, 960 F.2d 1286 (5th Cir. 1992)(holding that federal court has jurisdiction to enjoin state court litigation that conflicts with final federal declaratory judgment). Once lawsuits like those mounted by T.M. are correctly categorized as a lawsuit for an anti-suit injunction, the existence of jurisdiction becomes obvious: the federal court has jurisdiction to stay or interfere with ongoing state proceedings so long as no abstention doctrine applies and there is no violation of the Anti-Injunction Act, 28 U.S.C. §2283, Tax Injunction Act, 28 U.S.C. §1341, or other immunity from suit.

2. The Ninth Circuit's Treatment of *Rooker-Feldman* Doctrine is the Best Reason to Abolish It

After making the expanded argument for why this Court should pick the correct version of this argument in the merits brief, T.M. tacks on an alternative suggestion: abolishing the *Rooker-Feldman* doctrine. This is an excellent proposal and the best reason to do so is the Ninth Circuit's decades of bad-faith application of the doctrine, which will not end if Sanai is not granted intervention.

In the *Rooker-Feldman* arena, the Ninth Circuit is the most aggressively disdainful of this Court's precedents and indeed its own published precedents,

particularly in cases chosen to be subject to unpublished dispositions. To take one example discussed above, the Ninth Circuit's unpublished case law universally holds that *Rooker-Feldman* doctrine applies to state court litigation ongoing when the federal lawsuit is filed. *See* fn. 2, *supra, citing Doe v. Napolitano Law Offices, supra.* However, the Ninth Circuit's published case law recognized the opposite rule after *Exxon Mobil.* This has been recognized by district courts within the Ninth Circuit and other by Judge Ishii in *CMLS Mgmt.*, *supra.*

Mothershed, cited by in *CMLS Mgmt.*, authored by Judge O'Scannlain and joined by Judges Goodwin and Beezer, was addressed by the Seventh Circuit as follows:

> On appeal, Parker first challenges the district court's application of the *Rooker-Feldman* doctrine. We conclude that *Rooker-Feldman* does not apply here for two reasons. First, that doctrine divests district courts of jurisdiction only in cases where "the losing party in state court filed suit in federal court after the state proceedings ended." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 291, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) (emphasis added). Parker sued in federal court while his appeal from the state circuit court's judgment was pending in Illinois Appellate Court. Since *Saudi Basic Industries*, all federal circuits that have addressed the issue have concluded that

> *Rooker-Feldman* does not apply if, as here, a state-court appeal is pending when the federal suit is filed. *See Nicholson v. Shafe,* 558 F.3d 1266, 1279 (11th Cir.2009); *Guttman v. Khalsa,* 446 F.3d 1027, 1032 n. 2 (10th Cir.2006); *Dornheim v. Sholes*, 430 F.3d 919, 923-24 (8th Cir.2005); *Mothershed v. Justices of the Supreme Court,* 410 F.3d 602, 604 n. 1 (9th Cir.2005); *Federación de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico,* 410 F.3d 17, 25 (1st Cir.2005). As the Ninth Circuit explained, *Saudi Basic Industries* clarified that "[p]roceedings end for *Rooker-Feldman* purposes when the state courts finally resolve the issue that the federal court plaintiff seeks to relitigate in a federal forum." *Mothershed,* 410 F.3d at 604 n. 1 (emphasis added). It added that if the state-court appeal is pending at the time the federal action is filed, the necessary final resolution in the state system is not present. We agree with this reasoning and conclude that *Rooker-Feldman* does not bar the claims of federal-court plaintiffs who, like Parker, file a federal suit when a state-court appeal is pending.

Parker v. Lyons, 757 F. 3d 701, 705-706 (7th Cir. 2014)(citing *Exxon Mobil* as "*Saudi Basic*").

As Judge Ishi pointed out, the unpublished Ninth Circuit case law subsequent to *Mothershed* has never followed *Mothershed*, sometimes, as in the case of *Marciano v. White*, *supra*, explicitly so. This is not the product of ignorance by the subsequent panels. *Mothershed* was a panel decision of Circuit Judges Goodwin, Beezer and O'Scannlain. Each of them subsequently signed unpublished opinions that did not follow *Mothershed*. *See*, *e.g.*, *Santos*, *supra.*

In *RLR*, the dissenting Sixth Circuit judge called out the Ninth Circuit's predilection for saying one thing in published case law and another thing in its unpublished dispositions:

> Seeking to create a veneer of non-unanimity, the majority points to an unpublished Ninth Circuit memorandum that quoted a pre-*Exxon* case for the proposition that *Rooker-Feldman* applies to "interlocutory state court decisions." *Santos v. Superior Ct. of Guam,* 711 F. App'x 419, 420 (9th Cir. 2018) (memorandum) (*quoting Doe & Assocs. Law Offices v. Napolitano,* 252 F.3d 1026, 1030 (9th Cir. 2001)). But, as noted above, published Ninth Circuit precedent holds otherwise. *See Mothershed,* 410 F.3d at 604 n.1.

RLR at 401 n.6 (6th Cir. 2021)(Clay, C.J. diss.).

The Ninth Circuit's error is refusing to accept that "a statute or rule governing the decision may be challenged in a federal action" includes challenges on

an as-applied basis. The claims the panel teases out of the three causes of action in *Searle* are as-applied challenges. They meet the *Skinner* test just as much as a facial challenge. Though Searle cited and argued *Reed* in her briefing, the panel did not address the case, let alone the mode of analysis used by this Court in *Reed*.

This is yet another iteration of a never-ending problem recently called out by Justice Gorsuch:

> Lower court judges may sometimes disagree with this Court's decisions, but they are never free to defy them….
>
> ….
>
> Of course, decisions regarding interim relief are not necessarily "conclusive as to the merits" because further litigation may follow. *Trump v. Boyle*, 606 U. S. ___ (2025) (slip op., at 1). But regardless of a decision's procedural posture, its "reasoning—its ratio decidendi"—carries precedential weight in "future cases." *Ramos v. Louisiana*, 590 U. S. 83, 104 (2020) (opinion of GORSUCH, J.); see also *Bucklew v. Precythe*, 587 U. S. 119, 136 (2019) ("[J]ust as binding as [a] holding is the reasoning underlying it").
>
> …..
>
> If the district court's failure to abide by *California* were a one-off, perhaps it would not be worth writing to address it. But two months ago another district court tried to "compel compliance" with a different "order that this Court ha[d] stayed." *Department of Homeland*

> *Security v. D.V.D.*, 606 U.S. ___, ___ (2025) (KAGAN, J., concurring) (slip op., at 1). Still another district court recently diverged from one of this Court's decisions even though the case at hand did not differ "in any pertinent respect" from the one this Court had decided. *Boyle*, 606 U. S., at ___ (slip op., at 1). So this is now the third time in a matter of weeks this Court has had to intercede in a case "squarely controlled" by one of its precedents. *Ibid.* All these interventions should have been unnecessary, but together they underscore a basic tenet of our judicial system: Whatever their own views, judges are duty-bound to respect "the hierarchy of the federal court system created by the Constitution and Congress." *Hutto*, 454 U. S., at 375.

NIH v. APHA, 606 U. S. ____, Docket No. 25A103 (August 21, 2025)(Opn. Of Gorsuch, J.)(slip op., at 4).

The Ninth Circuit's deliberate refusal to follow its own published authority is not unique to that Court; only the brazenness of its refusal. Many of the ciruits are fundamentally divided on the meaning and application of *Rooker-Feldman*, and this persistent failure to agree on how to apply the test is adequate grounds to dispose of it.

B. This Court Should Articulate a Comprehensive Test for Application of the *Rooker-Feldman* Doctrine if it does not Abolish it.

Many judges have complained about the difficulty of applying the *Rooker-Feldman* doctrine, and the circuit courts disagree about the formulation of the test and whether exceptions such as for voidness or fraud exist. *Compare Gilbank*, *supra*(reversing prior precedent recognizing fraud exception) *with Kougasian*, *supra* (re-affirming fraud exception based on *Barrow v. Hunton, supra*).

There are four reasons for the inconsistencies. First, the lower courts often do not grasp that *Rooker* is based on the correct, originalist understanding of "original jurisdiction" and thus there is some overlap between proceedings which are original versus those that are appellate in character. Second, *Feldman's* general challenge exception is not part of the originalist conception of original jurisdiction or of appellate function and thus cannot be derived from the historical origins supporting *Rooker*. Third, this Court has not issued a comprehensive test for its application; the case law denying the application of the *Rooker-Feldman* doctrine is just as important as *Rooker*, *Feldman* and *Feldman*, but few Courts of Appeals opinions evaluate their Circuit's formulation against cases such as *Reed* that create a negative rule for application of the doctrine. Fourth, in the Ninth Circuit, the published precedents of this Court and the Ninth Circuit itself are regularly ignored in unpublished dispositions since : "They can't catch 'em

all." Sam Roberts, *Stephen Reinhardt, Liberal Lion of Federal Court, Dies* at 87, *supra.*

Sanai submits his solution to the problem. A joint amicus curiae brief already filed in *Pung* and this brief articulate a two-part, multi-prong test based on the Ninth Circuit's *Noel v. Hall* two-step, multi-prong test as to each claim in a lawsuit. This test only includes test prongs that have been articulated by this Court.

STEP 1: IS A CLAIM IN THE LAWSUIT A DE FACTO APPEAL?

Question 1: Does a claim in a lawsuit in federal court seek relief from an order or judgment of a state court or other state tribunal the proceedings of which are judicial in nature and to which the federal court plaintiff was a named party?

Answer 1: If yes, continue to Question 2 as to such claim. If no, *Rooker-Feldman* does not apply to such claim at all. *See Rooker; Exxon Mobil* at 287.

Question 2: At the time the federal lawsuit was filed, had the state proceeding ended such that it had reached the stage where a petition for certiorari could have been (or was) filed in this Court?

Answer 2: If no, and the state proceeding has not reached this stage, then *Rooker-Feldman* does not apply to the lawsuit, period, as to any claims regarding the state proceeding. Otherwise, if the answer is yes and the litigation has reached the point where a petition for certiorari could have been filed at the time the federal litigation was filed, go to Question 3.

Question 3: Does a claim in the federal court lawsuit contend that the order or judgment is void for lack of personal jurisdiction or subject matter jurisdiction under state or federal law?

Answer 3: If the answer is yes, that claim is not subject to *Rooker-Feldman*. *See Rooker*; *Atchison*, *supra.* As to other claims, go to Question 4.

Question 4: Does a claim in the federal lawsuit allege the order or judgment was obtained by extrinsic or intrinsic fraud or other serious litigation wrongdoing?

Answer 4: If it is alleged that a claim was obtained by extrinsic or intrinsic fraud or other serious wrongdoing such as bribing witnesses, that claim is not subject to *Rooker-Feldman*. If there are other claims, go to Question 5. *See Barrow, supra.*

Question 5: Does a claim in the federal lawsuit contend that as authoritatively applied against the plaintiff in the state proceeding, facially, or on an overbreadth basis, a state law or rule was unconstitutional under the Fourteenth Amendment, the Supremacy Clause, or under any other federal Constitutional basis? Put another way, does a claim assert the state tribunal in accordance with its correct interpretation (without regard to federal unconstitutionality) of state law or rules violated federal constitutional law where the state law or rule was a basis for the challenged final order or judgment?

Answer 5: If the answer is yes as to a claim, such claim is not subject to *Rooker Feldman*. *See*

Reed, supra. For any claims remaining go to Question 6.

Question 6: Does a claim in the federal lawsuit contend that as authoritatively applied against the plaintiff in the state proceeding, facially, or on an overbreadth basis, a federal law or rule was unconstitutional under the Fifth Amendment, separation of powers, or under any other federal Constitutional basis? Put another way, does a claim assert that the state tribunal, in accordance with its correct interpretation (without regard to federal unconstitutionality) of federal law or rules, violated federal constitutional law where the federal law or rule was the basis for the challenged final order or judgment?

Answer 6: If the answer is yes as to a claim, such claim is not subject to *Rooker-Feldman. See Reed, supra.* For any claims that have not been excluded from application of *Rooker-Feldman,* go to Step 2.

STEP 2: IS ANY DE FACTO APPEAL CLAIM INEXTRICABLY INTERTWINED?

If Answer 1 was "yes" as to any claim and Answer 2 was "yes" as to the lawsuit, then any claims as to which all of Answers 3, 4, 5, and 6 are "no" could potentially be inextricably intertwined with the state tribunal's final order or judgment. A claim is inextricably intertwined with the final order or judgment if success on that claim would necessarily require the federal court to find that the state court made an error in applying a state law or rule (without regard to its unconstitutionality under federal law), a

federal law or rule (other than relating to constitutionality) or that the state court was necessarily wrong in resolving a disputed issue of fact unaffected by any fraud on the court. A claim is not inextricably intertwined if resolving the issue in the federal plaintiff's favor might, but not necessarily will, cause the state court judge to change its mind on the question of law of interpretation of state or federal law or the disputed issue of fact.

The proposed test addresses all possible grounds by which *Rooker-Feldman* might be applied or not. Fundamentally, if the lawsuit is ongoing at the time the federal lawsuit is filed, *Rooker-Feldman* does not apply. If the federal court plaintiff was not a named party to the state court proceedings, *Rooker-Feldman* does not apply. If no relief from a judgment or order is requested, *Rooker-Feldman* does not apply. As to specific claims, the federal court may only address claims of fraud, lack of jurisdiction, and those asserting that the state or federal law or rule, as authoritatively applied in accordance with its terms in respect of the state-court judgment attacked, is unconstitutional on an as-applied, overbreadth, or facial basis.

On the other hand, *Rooker-Feldman* bars attacks on a state-court judgment premised on a pure issue of disputed fact. *Rooker-Feldman* bars attacking a state-court judgment on a state law cause of action on the grounds that the state court got the state law issues wrong as a matter of state law. *Rooker-Feldman* bars attacking a state-court judgment on a federal cause of action unrelated to constitutionality on the grounds that the state court got the federal law wrong.

C. Abolishing *Rooker-Feldman* Will Not Result in Federal Courts Becoming Appellate Courts Because of Claim and Issue Preclusion

While *Rooker* is based on the originalist conception of "original jurisdiction", this Court expressed concerns that some sort of jurisdictional limitation was appropriate to prevent federal courts from becoming supplementary state appellate courts prior to *Rooker*. *See Barlow, supra; see also Marshall v. Holmes,* 141 U.S. 589, 597 (1891). This concern is misplaced. Federal courts can no more become back-up appellate tribunals for a particular state court than the state's courts of general jurisdiction can, because of issue and claim preclusion. Indeed, to the extent that a particular state's interpretation of claims and issue preclusion will allow a second bite at the apple in respect of a particular transaction or occurrence, there is no principled reason under *Erie* doctrine to block a federal court from hearing the claim. Indeed, this Court has already ruled that, under *Erie*, state claim and issue preclusion rules apply in diversity cases. *Semtek International Inc. v. Lockheed Martin Corp.,* 531 U.S. 497, 504 (2001), *discussing Erie R. Co. v. Tompkins,* 304 U. S. 64, 78-80 (1938). Indeed, one of the many other nuances of *Rooker-Feldman* doctrine that has split the Circuit courts is whether *Rooker-Feldman* applies to claims that attack which state judgment where the laws of the state permits such an attack. *Compare Davis v. Bayless,* 70 F.3d 367, 376 (5th Cir. 1995) (holding it would not "allow[] the *Rooker–Feldman* doctrine to bar an action in federal court when that same action

would be allowed in the state court of the rendering state." with *Kamilewicz v. Bank of Boston Corp.,* 92 F. 3d 506 (7th Cir. 1996) and *Kamilewicz v. Bank of Boston Corp.,* 100 F. 3d 1348 (7th Cir. 1996)(Easterbrook, J., diss. from denial of en banc review)

CONCLUSION

If this Court denies Mr. Sanai's motion to intervene, this amicus brief should be treated as a regular amicus brief; however, Mr. Sanai does not withdraw his motion to intervene. If it is necessary for Mr. Sanai to be substituted in pro per after filing of this brief, counsel consents to such substitution. If Mr. Sanai's motion to intervene is granted, this amicus brief should be treated as his brief on the merits, and he should be allowed a to file a reply brief.

Dated this January 20, 2026.

Respectfully submitted,

Frances L. Diaz SB#159837
Law Offices of Frances L. Diaz
8306 Wilshire Boulevard, #263
Beverly Hills, California 90211
(310) 927-5086
francesdiaz@frontier.com
counsel for Amicus