

25-6098

SUPREME COURT OF THE UNITED STATES

Elston Bone,  
Petitioner

Supreme Court, U.S.  
FILED

OCT 08 2025

OFFICE OF THE CLERK

V

Commonwealth Of Massachusetts, Norfolk County Superior Court;  
Massachusetts Court Of Appeals; Massachusetts Supreme Judicial Court;  
Norfolk County District Attorney's Office; Massachusetts Attorney General  
Andrea Campbell; Michael W Morrissey, in his capacity as District Attorney, and  
Michael W Morrissey, in his individual capacity.

Respondent

On A Dismissal From An Appeal Of The United States  
First Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Petitioner

## **I. Question Presented**

Does the Federal District Court have subject matter jurisdiction, over a Plaintiff who brings a 42 U.S.C. section 1983 action, and presents an independent claim challenging the constitutionality a statute or rule governing the decision under which he was convicted in state court; the two step framework of History and Intermediate Scrutiny. The same two step framework of History and Intermediate Scrutiny the United States Supreme Court struck down as unconstitutional in New York Rifle and Pistol Association v Bruen 597 U.S. 1 (2022), even though the same question was earlier aired in state court.

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<p>To avoid the erroneous deprivations of the rights of individuals who bring a 42 U.S.C. section 1983 claim challenging a statute or rule governing a decision his under which he earlier convicted in state court, even though the same or related question was earlier aired in state court, from being barred by lack of subject matter jurisdiction.</p>	
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#### **IV. Petition for Writ Of Certiorari**

Mr. Bone, who brought a 42 U.S.C. section 1983 action against the Commonwealth of Massachusetts et al, respectfully petitions this court for a writ of certiorari to review the judgment of the United States First Circuit Court Of Appeals, affirming the Massachusetts District Court dismissal of his action for lack of subject matter jurisdiction.

#### **V. Opinions Below**

The decision by the United States First Circuit Court Of Appeals 0:24-cv-01703, affirming the Massachusetts District Court's, 1:24-cv-10609 order, dismissing Mr. Bone 42 U.S.C. 1983 action motion to dismiss for lack of subject matter jurisdiction - Rooker-Feldman Doctrine on July 17, 2025. Those orders are attached. (App) at 1-3.

#### **VI. Jurisdiction**

The United States First Circuit Court Of Appeals affirmed the District Court Order to dismiss on July 17, 2025. Mr. Bone invokes this Court's jurisdiction under 28 U.S.C. section 1254, having timely filed this petition for a writ of certiorari within ninety days of the United States First Circuit Court Of Appeals judgment.

#### **VII. Constitutional Provisions Invoked**

**United States Constitution, Amendment II:**

“ A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed”.

**United States Constitution, Amendment XIV:**

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

**VIII. Statement of the Case**

In 2011, this Court held in Skinner v Switzer “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. Mr. Skinner, brought a 42 U.S.C. section 1983 action in Texas Federal District Court, and presented independent claim, challenging Texas Statute Article 64, violated his Fourteenth Amendment right to due process by refusing to provide for the DNA testing he requested. This Court held “ if a federal Plaintiff presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that the “same or related question was earlier aired between the parties in state court. Id, at 292-293. “A state court a decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal

then conducted a warrantless search and seizure of Mr. Bone firearms. The next day, Mr. Bone was arrested at his place of employment in Boston, Massachusetts, transported to Quincy District Court where he was arraigned for possession of firearms and possession of ammunition without a Massachusetts licence or Massachusetts firearms identification card, improper storage, unauthorized use of a motor vehicle and domestic violence. In December 2007, Quincy District Court dismissed all charges against Mr. Bone.

On May 27, 2008, after being indicted by a Norfolk County Superior Court grand jury, Mr. Bone appeared in Norfolk County Superior Court, and was charged with possession of firearms and ammunition without a Massachusetts license or Massachusetts firearms identification card, improper storage, possession of a large capacity feeding device without a Massachusetts license or Massachusetts firearms identification card.

On December 14, 2009, as a result of Mr. Bone refusal to plead guilty to earlier charges, Mr. Bone was additionally indicted by a Norfolk County Superior Court grand jury and appeared in Norfolk County Superior Court, and charged with possession of firearm without a Massachusetts permit or Massachusetts firearms identification card, possession of ammunition without a Massachusetts permit or Massachusetts firearm identification card and improper storage. On January 6, 2011, Mr. Bone went to trial and was convicted of 1. Possession of a firearm without permit. 2. Possession of a firearm without a permit. 3. Possession of a firearm without a permit. 4. Firearm violation

action". See, e.g., Feldman, 460, U.S.,at 487. Because Skinner's federal case which challenges not the adverse state court decisions, but the Texas statute they authoritatively construed falls within the latter category, there was no lack of subject matter jurisdiction over his federal suit." Skinner v Swirtzer 562 U.S. 521 (2011).

The instant case presents the question of whether the Federal District Court has subject matter jurisdiction, of a Plaintiff who brought a 42 U.S.C section 1983 action in federal district court, and presented an independent claim, challenging the Constitutionality of the statute and or rule of the twostep framework of History and Intermediate Scrutiny, under which he was convicted in state court. The same two step framework the United States Supreme Court struck down as unconstitutional in New York State Rifle andPistol Association v Bruen, 597 U.S 1 (2022), or barred by lack of subject matter jurisdiction.

### **The Argument And Warrantless Search And Seizure**

On September 18, 2007, Mr. Bone, who had recently moved from New Hampshire to Massachusetts, and possessing an unexpired New Hampshire license to carry concealed, had an argument with his wife in their home in Randolph, Massachusetts. Mr. Bone left his home to cool down and get something to eat, taking his wife's car. After Mr. Bone left his home, Mrs. Bone called the Randolph Police Department. The Randolph Police Department arrived at the Bone residence and asked Mrs. Bone are there any firearms in the home, and she replied yes. Randolph Police

then conducted a warrantless search and seizure of Mr. Bone firearms. The next day, Mr. Bone was arrested at his place of employment in Boston, Massachusetts, transported to Quincy District Court where he was arraigned for possession of firearms and possession of ammunition without a Massachusetts licence or Massachusetts firearms identification card, improper storage, unauthorized use of a motor vehicle and domestic violence. In December 2007, Quincy District Court dismissed all charges against Mr. Bone.

On May 27, 2008, after being indicted by a Norfolk County Superior Court grand jury, Mr. Bone appeared in Norfolk County Superior Court, and was charged with possession of firearms and ammunition without a Massachusetts license or Massachusetts firearms identification card, improper storage, possession of a large capacity feeding device without a Massachusetts license or Massachusetts firearms identification card.

On December 14, 2009, as a result of Mr. Bone refusal to plead guilty to earlier charges, Mr. Bone was additionally indicted by a Norfolk County Superior Court grand jury and appeared in Norfolk County Superior Court, and charged with possession of firearm without a Massachusetts permit or Massachusetts firearms identification card, possession of ammunition without a Massachusetts permit or Massachusetts firearm identification card and improper storage. On January 6, 2011, Mr. Bone went to trial and was convicted of 1. Possession of a firearm without permit. 2. Possession of a firearm without a permit. 3. Possession of a firearm without a permit. 4. Firearm violation

improper storage. 5. Possession of a firearm without a firearm identification card. 6.

Improper storage. 7. Possession of ammunition without a firearm identification card.

Mr. Bone appealed to the Massachusetts Appeals Court which affirmed the convictions. Mr. Bone appealed to Massachusetts Supreme Judicial Court which declined to hear the appeal.

On May 18, 2022, Mr. Bone filed a motion for a new trial in Norfolk County Superior Court. On August 24, 2022, Mr. Bone filed Motion To Vacate And Or Dismiss convictions based on United States Supreme Court ruling in New York State Rifle And Pistol Association v Bruen 597 U.S. 1 (2022), and that there has been a substantial change in the law. On January 9, 2023, Mr. Bone withdrew motion for a new trial, and his case was transferred to a new judge because of a conflict of interest. On January 13, 2023, Mr. Bone filed an amended motion to vacate and or dismiss convictions or as a matter of law. On February 6, 2023, without a hearing or Mr. Bone appearing in court, (without due process), Mr. Bone's motion to vacate and or dismiss was dismissed.

## **IX. REASONS FOR GRANTING THE WRIT**

**A. To avoid the erroneous deprivation of the Constitutionally protected rights, of individual(s) who bring a 42 U.S.C section 1983 action in Federal District Court, and present an independent claim challenging the constitutionality of a rule or statute governing a decision under which he was convicted in state court, even though the same question was earlier aired in the state court, from being barred ...by lack of subject matter jurisdiction.**

In Skinner v Switzer 562 U.S.521 (2011), this court established " if a federal Plaintiff

presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that same question was earlier aired between the parties in state court"

Mr. Skinner brought a 42 U.S.C. section 1983 claim in federal district court, challenging the Texas Statutes authority, arguing that the State of Texas violated his Fourteenth Amendment constitutional Right(s) to due process because he was twice denied DNA testing in his criminal trial.

This Court held, because Skinner's federal case challenged not the adverse state court decisions, but the Texas Statutes they authoritatively construed, falls within the latter category, there was no lack of subject matter jurisdiction over his federal suit. *Skinner v Switzer* 562 U.S. 521 (2011).

Moreover, Justice Ginsburg in further articulating the Court's ruling, cautioned about the overuse of the Rooker Feldman Doctrine stated "As the Court explained in *Feldman*, 460 U.S. at 487, and reiterated in *Exxon*, 544 U.S. at 286, 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". *Skinner v Switzer* 562 U.S. 521 ( 2011).

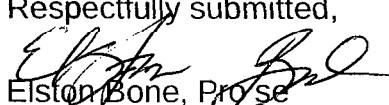
Mr. Bone, after his independent claims were ignored and dismissed in state court, brought his 42 U.S.C. section 1983 action in federal district court, challenging the constitutionality of the two step framework of History and Intermediate Scrutiny. The same two step framework under which he had been convicted in state court, the same two step framework that this Court struck down as unconstitutional in New York State

Rifle and Pistol Association v Bruen 597 U.S. 1 (2022). This court announced "the appropriate standard in second amendment cases is Text, History and Tradition", New York State Pistol Association v Bruen 597 U.S. 1 (2022).

#### X. CONCLUSION

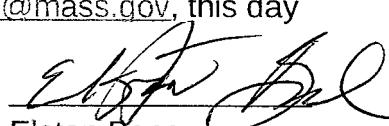
For the foregoing reasons, Mr. Bone respectfully requests that this Court issue a writ of certiorari to review the judgment of the First Circuit Court Of Appeals, affirming the District Court dismissal.

Dated this day, October 7, 2025.

Respectfully submitted,  
  
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#### CERTIFICATE OF SERVICE

I Elston Bone, do hereby certify that a copy of this Petition For Writ Of Certiorari has been sent to Respondents, Daniel Rubin at daniel.ruben@mass.gov, this day October 7, 2025.

  
Elston Bone

# United States Court of Appeals For the First Circuit

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No. 24-1703

ELSTON BONE,

Plaintiff - Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS; NORFOLK COUNTY SUPERIOR COURT;  
MASSACHUSETTS COURT OF APPEALS; MASSACHUSETTS SUPREME JUDICIAL  
COURT; NORFOLK COUNTY DISTRICT ATTORNEY'S OFFICE; ANDREA JOY  
CAMPBELL; MICHAEL W. MORRISSEY, in his capacity as District Attorney and in his  
individual capacity,

Defendants - Appellees.

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Before

Montecalvo, Rikelman, and Aframe,  
Circuit Judges.

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## JUDGMENT

Entered: July 17, 2025

Appellant Elston Bone appeals from the district court's order granting the appellees' motion to dismiss his amended complaint and denial of his two motions to amend. The Rooker-Feldman doctrine prohibits lower federal courts from reviewing final state court judgments and decisions. See Exxon Mobil v. Saudi Basic, 544 U.S. 280, 283-284, 292 (2005) (noting the doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments.") Under Rooker-Feldman, "lower federal courts do not possess subject matter jurisdiction over appeals from state court decisions, even if those decisions involve questions arising under the United States Constitution." See S. Boston Allied War Veterans Council v. Zobel, 830 F. Supp. 643, 646-647 (D. Mass. 1993) citing D.C. Ct. of Appeals v. Feldman, 460 U.S. 462, 482-483 (1983).

Upon de novo review and after careful consideration of the parties' submissions and the relevant portions of the record, we hold that the Rooker-Feldman doctrine bars appellant's claims.

The judgment of the district court is AFFIRMED. See 1st Cir. R. 27.0(c). All pending motions are denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Elston Bone  
Daniel J. Ruben

United States District Court

District of Massachusetts

**Notice of Electronic Filing**

The following transaction was entered on 7/24/2024 at 3:47 PM EDT and filed on 7/24/2024

**Case Name:** Bone v. Commonwealth of Massachusetts et al

**Case Number:** 1:24-cv-10609-MJJ

**Filer:**

**Document Number:** 44 (No document attached)

**Docket Text:**

Judge Myong J. Joun: ORDER entered re: [33] Motion to Dismiss for Failure to State a Claim and other reasons; [38] Third Motion to Amend Complaint; [41] Plaintiff's Motion to Amend his Third Complaint.

This Court does not have jurisdiction of the subject case and is thus **DISMISSED**. See Johnson v. De Grandy, 512 U.S. 997, 1005-1006 (1994) (The RookerFeldman abstention doctrine bars a losing party in state court "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights").

Here, Plaintiff Elston Bone ("Mr. Bone") is challenging a Massachusetts state court final judgment. [Doc. No. 27 at 3], CR080306001, CR080306002, CR080306003, CR080306004, CR090952001, CR090952002, CR090952003, CR090952004; [Id. at 4,5] (Mr. Bone appealed to the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court, which upheld the Norfolk Superior Court judgments). This Court takes judicial notice of the following court proceedings. See Commonwealth v. Bone, 466 Mass. 1106, 1106, (2013) (Mr. Bone's leave for further appellate review from Defendant SJC was denied). See Bone v. Attorney General, 150 F. Supp. 3d 140, 144 (D. Mass. 2015) (Mr. Bone was denied a writ of habeas corpus from the District Court of Massachusetts). Bone v. Healey, No. 16-cv-1086, 2017 WL 3682472, at \*1 (1st Cir. 2017) (Unpublished) (First Circuit affirmed denial).

Thus, Defendant's Motion to Dismiss [Doc. No. [33]] is **ALLOWED**. Plaintiff's Third Motion to Amend Complaint [Doc. No. [38]], and Plaintiff's Motion to Amend his Third Complaint [Doc. No. [41]] are **DENIED** as moot.

(York, Steve)