

25-6982
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

TONY COLE,
Petitioner,

FILED
FEB 27 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

v.

JOSEPH FAULKNER, 1205 MILWAUKEE LLC, JIN HWI LEE a/k/a Jin Lee, DAVID
YANOFF, CHRISTOPHER ACUNA,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal court of appeals may affirm dismissal under the Rooker-Feldman doctrine where the district court's final and operative order expressly held that the doctrine did not bar the plaintiff's federal damages claims and dismissed those claims on the merits under Rule 12(b)(6).
2. Whether, under the Full Faith and Credit Act, 28 U.S.C. § 1738, a federal court may apply claim preclusion based on a state-court judgment that was non-final under state law at the time of the federal appellate decision because the state appellate mandate had been recalled.
3. Whether a court of appeals' reliance on Rooker-Feldman to bar independent federal damages claims conflicts with this Court's directive in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), that the doctrine is narrow and confined to cases seeking review of state-court judgments themselves.

LIST OF ALL PARTIES

All parties to the proceeding in the United States Court of Appeals for the Seventh Circuit are listed in the caption. **Petitioner Tony Cole** is an individual. Respondents are:

- Joseph C. Faulkner (individual)
- 1205 Milwaukee LLC (Illinois limited liability company)
- Jin Hwi Lee, a/k/a Jin Lee (individual)
- David Yanoff (individual)
- Christopher Acuna (individual)

CORPORATE DISCLOSURE STATEMENT

Petitioner Tony Cole is not a corporation. Respondent 1205 Milwaukee LLC has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is an unpublished order entered on January 21, 2026, and is reproduced in the Appendix at 1a-6a. The order denying rehearing was entered on January 29, 2026, and is reproduced at 7a.

The opinion of the United States District Court for the Northern District of Illinois (Alonso, J.) dismissing petitioner's claims on reconsideration was entered on May 9, 2025, and is reported at *Cole v. Faulkner*, No. 24 C 12117, 2025 WL 1000158 (N.D. Ill. May 9, 2025). It is reproduced in the Appendix at 8a-17a.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on January 21, 2026. A timely petition for panel rehearing was denied on January 29, 2026. The mandate of the court of appeals issued on February 6, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition is filed within 90 days of the entry of the court of appeals' judgment, as extended by the timely petition for rehearing. See 28 U.S.C. § 2101(c); Sup. Ct. R. 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V

"No person shall be . . . deprived of life, liberty, or property, without due process of law"

U.S. Const. amend. XIV, § 1

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law"

28 U.S.C. § 1738

"Such Acts, records and judicial proceedings [of any State] . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State . . . from which they are taken."

Illinois Supreme Court Rule 368

"(a) Unless a timely petition for rehearing is filed, or unless the court on its own orders a rehearing or that the mandate be issued forthwith, the clerk shall issue the mandate in a case 21 days after the entry of judgment. . . .

(b) When a petition for rehearing is granted, the mandate shall be recalled and the cause restored to the docket as a pending appeal."

INTRODUCTION

This petition arises from a demonstrable mischaracterization of a federal district court's final ruling and the subsequent application of claim preclusion based on a state-court judgment that was not final under state law at the time of the federal appellate decision. The case presents structural questions concerning the proper application of the Rooker-Feldman doctrine, the requirements of finality under the Full Faith and Credit Act, 28 U.S.C. § 1738, and the obligations of a federal court of appeals when reviewing a district court's merits-based dismissal under Rule 12(b)(6).

The district court expressly reconsidered and vacated its prior jurisdictional dismissal under Rooker-Feldman and held that petitioner's federal damages claims were not barred. It then dismissed those claims on the merits for failure to state a claim. The court of appeals, however, affirmed on the ground that the district court lacked subject-matter jurisdiction under Rooker-Feldman, a premise directly contradicted by the district court's operative order. The appellate decision thus rests on a factual and legal misstatement concerning the basis of the judgment below.

The court of appeals further applied claim preclusion under 28 U.S.C. § 1738 based on state-court judgments whose appellate mandate had been recalled at the time of the federal decision, rendering those judgments non-final under Illinois law. By granting those judgments preclusive effect before finality existed in the rendering state, the decision below raises important questions concerning federal-state comity and the proper temporal application of preclusion principles.

These questions implicate recurring issues of federal jurisdiction, appellate review integrity, and the narrow scope of the Rooker-Feldman doctrine as defined by this Court in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). Review is warranted.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Tony Cole leased to purchase a mixed-use property at 1205 North Milwaukee Avenue in Chicago, Illinois, from respondent Jin Lee beginning in April 2018. The property included a residential unit on the second floor and commercial space on the first floor, which petitioner used for his businesses. According to petitioner, Lee orally agreed to sell the entire property to petitioner for \$475,000. App. 10a.

Beginning in 2022, Lee commenced multiple eviction actions against petitioner in the Circuit Court of Cook County, Illinois. Two such actions were dismissed. *Lee v. Cole*, No. 20221709496 (Ill. Cir. Ct. Mar. 20, 2023) (**dismissed with prejudice**); *Lee v. Cole*, No. 20231704999 (Ill. Cir. Ct. Dec. 18, 2023) (**dismissed**). App. 11a-12a.

In December 2023, Lee transferred the property to respondent 1205 Milwaukee LLC via a warranty deed reciting consideration of \$10. App. 13a. Public records from the Illinois Secretary of State establish that 1205 Milwaukee LLC was formed on December 11, 2023, and that another entity, 1205 NP LLC, through which respondents claimed chain of title, was substituted into a federal foreclosure action on September 27, 2023, before it legally existed. Under Illinois law, a limited liability company comes into legal existence only upon filing of its articles of organization. 805 ILCS 180/5-5.

In February 2024, 1205 Milwaukee LLC, represented by respondent Christopher Acuna, filed two eviction actions “**20241703002 (Residential) and 20241702994 (Commercial)**” against petitioner in state court. Both evictions proceeded to a jury trial without discovery, and judgment was entered against petitioner. *1205 Milwaukee, LLC v. Cole*, No. 20241702994 (Ill. Cir. Ct. July 2024) and *1205 Milwaukee, LLC v. Cole*, No. 20241703002 (Ill. Cir. Ct. December 2024). Petitioner was evicted from the commercial space in November 2024 and from the residential space in early 2025.

Throughout this period, petitioner filed multiple state-court actions against Lee, Yanoff, and others, alleging breach of contract, legal malpractice, and fraud. A state-court appeal in *Cole v. Lee*, No. 20231108836, remains pending. A chancery court action, *1205 Milwaukee, LLC v. Cole*, No. 2024CH06317, is ongoing, with petitioner's counterclaims for fraudulent transfer and breach of contract preserved by court orders entered in May, June, and July 2025. App. 14a-15a.

B. Proceedings in the District Court

In November 2024, petitioner filed this federal action against respondents in the United States District Court for the Northern District of Illinois. The complaint alleged retaliatory eviction under the Fair Housing Act, 42 U.S.C. § 3617; due process violations under 42 U.S.C. § 1983; and state-law claims for fraudulent transfer (740 ILCS 160/5), retaliatory eviction, and legal malpractice. Petitioner sought compensatory and punitive damages totaling \$1,075,000, as well as injunctive relief. App. 16a.

On March 6, 2025, the district court initially dismissed the action, concluding that the Rooker-Feldman doctrine barred all federal claims. Petitioner moved for reconsideration.

On May 9, 2025, the district court entered its final and operative Memorandum Opinion and Order. App. 8a-17a. The court **granted reconsideration in part**, explicitly holding:

"Cole's federal claims as to damages therefore survive a Rooker-Feldman challenge . . . the Court therefore reconsiders its prior ruling . . . and finds that the Rooker-Feldman doctrine does not apply to those claims." App. 16a.

The district court then dismissed petitioner's federal damages claims **on the merits under Rule 12(b)(6)** for failure to state a claim, concluding that the Fair Housing Act claim lacked a specific protected activity and that the § 1983 claim failed to adequately allege state action. The court declined to exercise supplemental jurisdiction over the remaining state-law claims, dismissing them without prejudice. App. 17a.

The district court granted petitioner leave to appeal in forma pauperis, certifying that "a reasonable person could suppose that the appeal has some merit." App. 18a.

C. The State Court Mandate and Its Recall

Throughout the federal proceedings, a parallel state court action proceeded in the Illinois Appellate Court, Case No. 1-24-1467 (*1205 Milwaukee, LLC v. Cole*). The procedural history of the state court mandate is dispositive of the jurisdictional questions presented:

- **August 1, 2025:** The Illinois Appellate Court initially issued its mandate.
- **September 16, 2025:** The Illinois Appellate Court recalled its mandate, suspending the finality of the judgment under Illinois law. App. 20a.
- **January 21, 2026:** The Seventh Circuit panel issued its decision affirming dismissal. App. 1a-6a.

- **January 26, 2026:** Petitioner filed a Petition for Panel Rehearing (Dkt. 78) identifying that the mandate remained recalled.
- **January 27, 2026:** Less than 24 hours after petitioner identified the jurisdictional defect, the Illinois Appellate Court reissued the mandate. App. 22a.

As of January 21, 2026, the date of the Seventh Circuit's decision, the state court mandate remained recalled. Under Illinois Supreme Court Rule 368 and *PSL Realty Co. v. Granite City Savings & Loan Ass'n*, 86 Ill. 2d 291 (1981), when a mandate is recalled, the judgment is not final and the appellate court retains jurisdiction.

D. Proceedings in the Court of Appeals

Petitioner timely appealed the district court's May 9, 2025 order. On January 21, 2026, a panel of the United States Court of Appeals for the Seventh Circuit (Easterbrook, Sykes, and Maldonado, JJ.) entered a nonprecedential order affirming the district court's dismissal. App. 1a-6a.

The panel's order misstated the basis of the district court's ruling, stating that "the district judge dismissed Cole's case, concluding under *Rooker-Feldman* that the court lacked jurisdiction over Cole's federal claims for damages and injunctive relief because his case was inextricably intertwined with the state-court proceedings." App. 4a. The panel then affirmed on alternative grounds of claim preclusion, relying on state-court eviction judgments that, at the time of the panel's decision, lacked finality due to the recalled mandate. App. 5a.

On January 26, 2026, petitioner filed a timely petition for panel rehearing, pointing out the factual error and attaching the district court's May 9, 2025 order and the September 16, 2025 mandate recall order. On January 29, 2026, the panel denied rehearing without comment. App.

7a.

On January 30, 2026, petitioner filed a separate Petition for Rehearing En Banc. **The Clerk issued an Order noting that under Fed. R. App. P. 40(a)(4), a party seeking both forms of rehearing must file a single document.** App. F. On February 6, 2026, petitioner filed a Motion for Leave to File Combined Petition for Rehearing and Rehearing En Banc Out of Time. On the same date, the Seventh Circuit issued its mandate, closing the case.

REASONS FOR GRANTING THE PETITION

This case presents fundamental questions about the integrity of the federal judicial process, the proper application of the Rooker-Feldman doctrine, and the obligations of federal courts under the Full Faith and Credit Act. The decision below, resting on a demonstrably false premise about the district court's ruling, exemplifies the type of procedural error that undermines confidence in the administration of justice and warrants this Court's review.

I. The Decision Below Presents Important Questions of Federal Law That Have Divided the Circuits and Require This Court's Resolution

This petition satisfies the criteria for certiorari set forth in Rule 10 of the Rules of this Court. The Seventh Circuit's decision:

- Conflicts with this Court's decisions in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), and *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982);
- Creates an intra-circuit conflict with the Seventh Circuit's own en banc decision in *Gilbank v. Wood County Department of Human Services*, 111 F.4th 754 (7th Cir. 2024);
and

- Decides important questions of federal law that have not been, but should be, settled by this Court.

The questions presented are not fact-bound inquiries into the particulars of this eviction dispute. They are systemic questions about the relationship between district and appellate courts, the finality required for claim preclusion under 28 U.S.C. § 1738, and the narrow scope of the Rooker-Feldman doctrine. These issues recur in litigation nationwide and demand this Court's clarification.

II. The Seventh Circuit's Misapplication of Rooker-Feldman Conflicts with *Exxon Mobil* and Creates an Intra-Circuit Conflict with *Gilbank*

In *Exxon Mobil*, this Court emphatically confined the Rooker-Feldman doctrine to "**cases brought by state-court losers complaining of injuries caused by state-court judgments.**" 544 U.S. at 284. The doctrine is "**narrow**" and does not bar federal claims simply because they relate to state proceedings. *Id.* at 292. Rather, it applies only where the federal plaintiff seeks review and reversal of a state-court judgment. *Id.* at 293.

The Seventh Circuit, sitting en banc, faithfully applied this Court's directive in *Gilbank v. Wood County Department of Human Services*, 111 F.4th 754 (7th Cir. 2024). *Gilbank* held that Rooker-Feldman does not bar claims for injuries caused by a defendant's conduct, rather than by the state judgment itself. *Id.* at 760. It reaffirmed that "**independent claims**" for damages, even those arising from the same factual background, are within federal jurisdiction. *Id.*

The district court correctly applied *Gilbank*. **In its May 9, 2025 order, the court explicitly held:**

"Cole's federal claims as to damages therefore survive a Rooker-Feldman challenge . . . the Rooker-Feldman doctrine does not apply to those claims." App. 16a. The court then adjudicated those claims on the merits under Rule 12(b)(6). App. 17a.

The Seventh Circuit panel, however, disregarded this holding. It stated—incorrectly—that "the district judge dismissed Cole's case, concluding under Rooker-Feldman that the court lacked jurisdiction over Cole's federal claims for damages." App. 4a. This is a demonstrable factual error. The district court had expressly reconsidered and vacated its prior Rooker-Feldman ruling. App. 16a.

By affirming on a jurisdictional ground the district court had rejected, the panel effectively reinstated a pre-*Gilbank* application of Rooker-Feldman. This creates a direct intra-circuit conflict with *Gilbank* and disregards this Court's directive in *Exxon Mobil* that the doctrine be narrowly confined. *See also Skinner v. Switzer*, 562 U.S. 521, 532 (2011); *Johnson v. Pushpin Holdings, LLC*, 748 F.3d 769, 773 (7th Cir. 2014).

The panel's error matters because jurisdictional and merits dismissals are analytically distinct. A Rule 12(b)(6) dismissal requires application of the plausibility standard, with well-pleaded allegations accepted as true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). It also carries with it the right to seek leave to amend. *Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Northwest Indiana*, 786 F.3d 510, 519 (7th Cir. 2015). A jurisdictional dismissal offers no such opportunity.

By mischaracterizing the district court's ruling, the panel deprived petitioner of these procedural protections and of any meaningful review of his constitutional claims.

III. The Application of Claim Preclusion Based on a Non-Final State Judgment Violates 28 U.S.C. § 1738 and This Court's Precedent

The Full Faith and Credit Act commands that federal courts give state-court judgments "the same full faith and credit . . . as they have by law or usage in the courts of such State." 28 U.S.C. § 1738. This Court has consistently held that federal courts must apply state preclusion law to determine the effect of a state judgment. *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 466 (1982).

Illinois law is clear: a judgment is not final for preclusion purposes while an appellate mandate is recalled. *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 304-05, 427 N.E.2d 563, 569 (1981). Illinois Supreme Court Rule 368 provides that when a petition for rehearing is granted or a mandate recalled, "the mandate shall be recalled and the cause restored to the docket as a pending appeal." Ill. Sup. Ct. R. 368(b). The appellate court retains jurisdiction, and the judgment lacks finality.

Here, the Seventh Circuit applied claim preclusion based on state-court eviction judgments. Yet the Illinois Appellate Court had recalled its mandate in *1205 Milwaukee, LLC v. Cole*, Appeal No. 1-24-1467, on September 16, 2025. App. 20a. On January 21, 2026, the date of the Seventh Circuit's decision, the mandate remained recalled. No final judgment existed under Illinois law. App. 21a.

The Seventh Circuit therefore granted the state judgments greater preclusive effect in federal court than they possessed in their own forum. This directly contravenes the plain text of § 1738 and this Court's precedent in *Kremer*.

The timing of subsequent events only underscores the impropriety. On January 26, 2026, petitioner filed his petition for panel rehearing, attaching the September 16, 2025 recall order. On January 27, 2026, less than 24 hours later, the Illinois Appellate Court reissued the mandate. App. 22a. This "coordinated finality" raises serious questions about the integrity of inter-court proceedings and whether a litigant can receive a fair federal hearing when the finality of a state judgment can be retroactively manufactured in response to a federal filing.

The Seventh Circuit's application of claim preclusion based on a non-final judgment violates fundamental principles of federal-state comity and warrants this Court's review.

IV. The Panel's Conflation of Jurisdictional and Merits Review Deprived Petitioner of Procedural Due Process

The Due Process Clause guarantees litigants a "meaningful opportunity to be heard." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). This opportunity must be "appropriate to the nature of the case." *United States v. Ruiz*, 536 U.S. 622, 631 (2002).

The Seventh Circuit's approach, affirming on jurisdictional grounds that the district court had rejected, deprived petitioner of that meaningful opportunity in two ways.

First, it bypassed the Rule 12(b)(6) pleading standard entirely. The panel did not assess whether petitioner's allegations plausibly stated claims under the Fair Housing Act or § 1983. It simply invoked Rooker-Feldman, a doctrine the district court had held inapplicable, and affirmed dismissal without engaging the merits. App. 4a-5a.

Second, it extinguished petitioner's right to amend. Under settled Seventh Circuit law, "a plaintiff whose original complaint has been dismissed under Rule 12(b)(6) should be given at least one opportunity to try to amend." *Runnion*, 786 F.3d at 519. A jurisdictional dismissal under Rule 12(b)(1) offers no such opportunity. By recasting a merits dismissal as jurisdictional, the panel foreclosed any possibility of amendment.

This Court has recognized that "the right to be heard" is "little more than a hollow formality" if procedural errors prevent meaningful consideration of a litigant's claims. *Logan*, 455 U.S. at 437. Here, the panel's factual error, misstating the basis of the district court's ruling, led directly to the application of the wrong standard of review and the denial of procedural rights guaranteed to all civil litigants.

This issue is not unique to petitioner. It affects every litigant whose case is mischaracterized on appeal. The question of what remedy exists when an appellate decision rests on a clear error of fact concerning the lower court's reasoning is one of fundamental fairness that has not been squarely addressed by this Court. Review is warranted.

CONCLUSION

For the foregoing reasons, this petition presents questions of exceptional importance concerning the finality of district court rulings, the proper application of the Full Faith and Credit Act, the narrow scope of the Rooker-Feldman doctrine, and the procedural due process rights of civil litigants. The decision below, resting on a demonstrable factual error and disregarding binding precedent, cannot be reconciled with this Court's decisions or with basic principles of judicial integrity.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Tony Cole

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Dated: February 27, 2026

VERIFICATION

I, Tony Cole, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that I am the Petitioner in the above-captioned matter, that I have read the foregoing Petition for a Writ of Certiorari, and that the factual statements contained therein are true and correct to the best of my knowledge, information, and belief.

Executed on: February 27, 2026

/s/ Tony Cole

Tony Cole, Pro Se Petitioner