No. 25-95

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL PUNG,
Personal Representative of the
Estate of Timothy Scott Pung,
Petitioner,

v.

ISABELLA COUNTY, MICH.,
Respondent.

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

BRIEF OF *AMICI CURIAE* CYRUS SANAI AND PEYMAN ROSHAN IN SUPPORT OF PETITIONER MICHAEL PUNG

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Constitutional Provisions

INTERESTS OF AMICI CURIAE[1]

Amici Cyrus Sanai ("Sanai") and Peyman Roshan ("Roshan") are California attorneys who individually and jointly have 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. Both Sanai and Roshan have ongoing lawsuits against *Ex Parte Young* defendants in federal court relying upon *Williams v. Reed*, *supra*, but have 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 Amici'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") - was outside of

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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 amici, monetarily contributed to the preparation or submission of this brief.

the jurisdiction of the federal courts under the *Rooker-Feldman* doctrine. *See Searle v. Allen*, 148 F.4th 1121 (9th Cir. 2025) ("*Searle*"). Amici Roshan sought to intervene in order to have the Ninth Circuit correct its error, but was denied. He has obtained an extension of time to file a petition for a writ of certiorari challenging that denial. *Roshan v. Searle*, Application No. 25A574.

Amici are filing this brief to point out the Ninth Circuit's jurisdictional ruling (which might be raised by counsel to Isabella County or 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]

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[2] This case is not the only one 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 investigative 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. The application of *Rooker-Feldman* to interlocutory decisions is the subject of at least two past petitions for certiorari and one pending petition, *T. M. v.*

In so doing Amici are proposing 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 Hum. Servs.*, 111 F.4th 754, 761 (2024)(en banc)("*Gilbank*").

INTRODUCTION

Eight weeks before this Court granted Mr. Pung's petition for certiorari, the Ninth Circuit published *Searle,* in which an unfortunate homeowner suffered the same wrong as him. *Searle* involved Arizona's prior property tax regime which has one major difference from the Michigan system at issue in this case. In Arizona, the tax liens themselves were auctioned to private purchasers, who then foreclose on the property either to retain or sell it. *Searle* at 1126. In Michigan, the state entity forecloses and sells the property to a private purchaser.

Like Pung, plaintiff Christine Searle sued the county involved, but she also sued the private purchaser of the lien. The Ninth Circuit held that the lawsuit against the County was barred by the *Rooker-Feldman* doctrine, because the lawsuit was a challenge of the prior state proceeding. This analysis, if applied to Pung's lawsuit, would require this Court to dismiss the proceeding based on absence of federal court jurisdiction.

While Pung addressed the *Rooker-Feldman* doctrine in his complaint, the issue was never raised

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University of Maryland Medical System Corp., Case No. 25-171.

by Isabella County, presumably because under *Reed,* and *Skinner* v. *Switzer*, 562 U.S. 521, 532 (2011) ("*Skinner*"), the *Rooker-Feldman* doctrine does not apply. However, even if this Court rules in favor of Pung in this lawsuit, the *Searle* decision is a barrier to its application in the Ninth Circuit as against the state entity that initiates the tax enforcement process.

Because the *Rooker-Feldman* doctrine is jurisdictional, this Court is required to address it even if the parties do not raise it. *Gonzalez v. Thaler* 565 U.S. 134, 141 (2012). Amici's brief raises this issue then puts forward a comprehensive test for application of the *Rooker-Feldman* doctrine created by Amicus Sanai. If this Court adopts it, it will put an end to the confusion and uncertainty in the lower courts regarding application of the *Rooker-Feldman* doctrine. *See, e.g.*, *Gilbank* at 761 ("[A]ll members of the en banc court agree that our different understandings of the *Rooker-Feldman* doctrine may help show a need for the Supreme Court to clarify application of the doctrine…".)

SUMMARY OF ARGUMENT

The Ninth Circuit addressed the same kind of takings and Eighth Amendment challenges to a property tax enforcement scheme in Arizona in *Searle* as is presented in this case. U.S. Const. amend. V, VIII. The Ninth Circuit refused under the *Rooker-Feldman* doctrine, however, to address the merits of the as-applied attack. Applied to Petitioner Pung's case, the Ninth Circuit analysis would also

require dismissal, since Pung's attack is as-applied, not facial.

Because this issue is jurisdictional, this Court must address the issue and should find that the Ninth Circuit's analysis is wrong because it does not recognize this Court's decisions in *Reed* and *Skinner*. In doing so, it should adopt a comprehensive test for application of the *Rooker-Feldman* doctrine as suggested below.

ARGUMENT

A. In *Searle*, the Ninth Circuit Articulated an Interpretation of the *Rooker-Feldman* Doctrine Applicable to Mr. Pung.

In *Searle*, the Ninth Circuit articulated an interpretation of the *Rooker-Feldman* doctrine which would require dismissal of Pung's case if it were adopted here. The facts as set forth in the opinion and its view of the *Rooker-Feldman* doctrine were as follows:

> Christine Searle failed to pay property taxes on her home in Maricopa County, Arizona. To secure payment, Maricopa County sold the tax liens on Searle's property for 2015 and 2016 to Arapaho, LLC Tesco. Arapaho ultimately filed a foreclosure action against Searle. When Searle failed to respond, Arapaho obtained a default judgment against her. The judgment declared that Searle has "no further legal or equitable right, title,

> or interest in the Property." Upon presentation of the judgment and pursuant to state law, Maricopa County Treasurer John Allen executed and delivered a deed to Arapaho conveying all rights and interest in the home, which Searle values at over $400,000. Arapaho promptly transferred the property to American Pride Properties, LLC.
>
> Searle sued Arapaho, American Pride, Maricopa County, and Allen (collectively, "Defendants") in district court, challenging the foreclosure of her home, Defendants' retention of the equity in her home exceeding the tax debt and related costs, and the facial constitutionality of the then-governing state law, Ariz. Rev. Stat. § 42-18204(B) (2008). She alleged both federal and state claims, seeking damages, an injunction against eviction, and a declaratory judgment that the statute was unconstitutional.
>
> ….Searle's claims directly attacking the state court foreclosure judgment—on the grounds that the foreclosure violated the United States and Arizona Constitutions because it was a taking without a legitimate public purpose[2] or constituted an excessive fine—are barred.

Searle at 1125.

In *Searle*, the Ninth Circuit affirmed the district court's ruling that the *Rooker-Feldman* doctrine bars a person whose property is sold in a tax auction from the suing the state entity to challenge the state action. That's exactly Pung's claim.

> 1. Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause of the Fifth Amendment when the compensation is based on the artificially depressed auction sale price rather than the property's fair market value?
>
> 2. Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for a fraction of its real value constitutes an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed?

Petitioner's Brief on the Merits at i.

B. The Ninth Circuit's Interpretation Would Require Dismissal of this Action.

The Ninth Circuit's analysis of *Rooker-Feldman* would require dismissal of this lawsuit. It held that:

> *Rooker-Feldman* bars Searle from directly challenging the state court foreclosure judgment in federal court. The judgment foreclosed Searle's right to redeem the tax

lien on her property, ordered the county treasurer to execute and deliver a deed conveying the property to Arapaho upon its payment of the required fee, and decreed that Searle "ha[d] no further legal or equitable right, title, or interest in the Property." *Arapaho, LLC Tesco v. Searle*, 2021 WL 10425563, at *1.

Searle seeks relief under the Fifth Amendment Takings Clause and its Arizona analogue because the sale of the liens to Arapaho and the subsequent foreclosure judgment constituted a taking without a legitimate public use. She further alleges that the taking of the house constituted an excessive fine under the Eighth Amendment and Arizona's constitutional analogue because the value of the house far exceeded her tax debt. These allegations are described in claims one, three, four, five, and seven of the SAC, although those enumerated claims also contain challenges to Defendants' retention of the surplus equity, which we discuss separately below.

Applying the *Exxon* test to determine whether *Rooker-Feldman* bars Searle's claims challenging the foreclosure as an invalid taking or an excessive fine, we conclude that it does and that the district court properly dismissed those claims for lack of subject matter jurisdiction. See 544 U.S. at 284, 125

S.Ct. 1517. Before Searle filed her federal suit, the state court entered a default judgment against her, and, although she sought to vacate the default judgment, she was unsuccessful. In the words of the Supreme Court, she was a "state-court loser[]." Id. Further, her federal suit complains of injuries caused by the foreclosure judgment, and she invites the district court to review and reject that judgment on the grounds that it constituted an unconstitutional taking and an excessive fine. See *id.*

We held that *Rooker-Feldman* applied in an analogous context in *Henrichs v. Valley View Development*, 474 F.3d 609 (9th Cir. 2007). There, Valley View prevailed in a state court action and obtained a judgment quieting title to a piece of property ("the Balboa lot") against which Henrichs and two others asserted a lien. *Id.* at 612. While the state court proceeding was pending, Valley View sold the Balboa lot to a third party. *Id.* at 613. After the state court entered the quiet title judgment, Henrichs filed a federal suit seeking a declaratory judgment that the state court judgment was void because of several alleged jurisdictional defects. *Id.* at 613-14. We held that *Rooker-Feldman* "squarely barred" this claim. *Id.* at 614. Henrichs also sought an injunction preventing Valley View from receiving

> the proceeds from the sale of the Balboa lot. *Id*. at 615. We held that *Rooker-Feldman* also barred this claim because the injury— Valley View's entitlement to the proceeds —was caused by the state court judgment and because "[g]ranting the injunction would require the district court to determine that the state court's decision was wrong and thus void." *Id*. at 616.

Searle at 1130.

The Ninth Circuit recognizes several exceptions to *Rooker-Feldman*, the primary one of which is based on a general challenge of state law under *District of Columbia Court of Appeals v. Feldman*, 460 U. S. 462 (1983) ("*Feldman*"). However, the Court refuses to apply it when invoked unless one can show a forward-looking application:

> Searle's facial challenge to the constitutionality of the Arizona statute allowing the enforcement of tax liens by private parties without providing just compensation, Ariz. Rev. Stat. § 42-18204(B), is not barred by *Rooker-Feldman*. However, it is moot, and we therefore lack jurisdiction under Article III to consider it. See *McDonald v. Lawson*, 94 F.4th 864, 868 (9th Cir. 2024).
>
> *Rooker-Feldman* does not bar facial challenges to the constitutionality of the statutory or regulatory scheme under

which the plaintiff lost a state court action. That is because such challenges "do not require review of a judicial decision in a particular case." *Feldman*, 460 U.S. at 487, 103 S.Ct. 1303. 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, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011).

While Searle's facial challenge to the statutory scheme is not barred by *Rooker-Feldman*, it is moot because the Arizona legislature has amended the governing statute since she filed her original complaint. See *American Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1151-52 (9th Cir. 2019) (applying mootness doctrine to policy change based on timing of plaintiff's original complaint). A "`repeal, amendment, or expiration of legislation' gives rise to `a presumption that the action is moot, unless there is a reasonable expectation that the legislative body is likely to enact the same or substantially similar legislation in the future.'" *McDonald*, 94 F.4th at 868 (quoting *Bd. of Trs. of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1197 (9th Cir. 2019) (en banc)); see also

> *Teter v. Lopez*, 125 F.4th 1301, 1306-07 (9th Cir. 2025) (en banc). "A reasonable expectation of the same or similar legislation being re-adopted `must be founded in the record.'" *McDonald*, 94 F.4th at 869 (quoting *Glazing Health*, 941 F.3d at 1199).

Searle at 1133-4.

This same logic was applied to Amicus Roshan. In his order dismissing Roshan's case, the district court judge stated that "*Rooker-Feldman* bars this Court from granting only requested relief that would redress the continuing adverse effects." *Roshan v. Lawrence*, N.D. Cal. Case No. 4:21-cv-01235-JST, Dkt. No. 139 at 9. As discussed below, this is incorrect. Under *Reed* and *Skinner* entering a declaratory judgment that the State Bar Court Rules of Procedure, as authoritatively construed by the State Bar Court and California Supreme Court, are unconstitutional, does not encounter the *Rooker-Feldman* jurisdictional bar.

As in Searle's case, the law changed during Petitioner Pung's litigation. As explained in the opposition to the petition for certiorari filed by Isabella County, while Pung was litigating, the Michigan Supreme Court ruled that the state could not confiscate the entirety of the surplus obtained from the foreclosure. *Rafaeli, LLC v Oakland Cty.,* 505 Mich. 429, 473, 477, 482-4, 952 N.W.2d 434, 460, 462, 465-6 (2020). Pung's challenge morphed from being based on receiving no compensation under the law, an as-applied and facial challenge, to one involving inadequate compensation in his particular

case. Pung's current theory is not a true facial challenge, because it is always possible that a particular tax sale of a property could result in a fair market value price for the property. Instead, Pung is making an as-applied challenge to the results in his case. In the Ninth Circuit, such challenge would be forbidden under *Searle*. However, the Ninth Circuit's interpretation is clearly wrong under *Reed* and *Skinner*.

C. 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 v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("*Rooker*"). 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 Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005)("*Exxon Mobil*").

The requirement that *Rooker-Feldman* applies only where a federal plaintiff "asserts as a legal wrong an allegedly erroneous decision" raises the question of 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.

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.

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).

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 circuits.

> 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 published *Mothershed* 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).

The decision cited in *CMLS Mgmt.* by District Court Judge Ishi, *Mothershed v. Justices of the Supreme Court,* 410 F.3d 602, 604 n. 1 (9th Cir. 2005), 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 a case for which review was unsuccessfully sought before this Court, a 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 Invs., LLC v. City of Pigeon Forge, Tennessee, 4 F.4th 380, 401 n.6 (6th Cir. 2021)(Clay, C.J. diss.)("*RLR Invs.*").

For at least the third time, a petition for certiorari is before this Court addressing whether *Rooker-Feldman* applies to an interlocutory decision where the state court proceedings are ongoing when the complaint is filed. *T. M. v. University of Maryland Medical System Corp.*, Case No. 25-171. The petition for certiorari filed in that action does not cite or discuss any Ninth Circuit case law, a suspicious omission given that it relies on *RLR Invs.* to demonstrate a circuit split. The petitioner's reply is also misleading, as it claims that:

> Respondents also suggest (Br. in Opp. 23) that, if the question presented here were worthy of the Court's review, the Court would have considered it earlier. But the

> Sixth Circuit's decision in *RLR Investments, LLC v. City of Pigeon Forge*, 4 F.4th 380 (2021), was the first to join respondents' side of the circuit conflict after *Exxon Mobil*. See Pet. at 8-11, *RLR Investments, LLC v. City of Pigeon Forge*, 142 S. Ct. 862 (2021) (No. 21-703).

Petitioner's Reply filed November 5, 2025, in *T.M. v. University of Maryland Medical System Corp.,* Case No. 25-171("*T.M.*").

The contention by the attorneys for petitioner T.M. that the circuit split emerged in 2021 is false. The first person to present the refusal to follow the majority rule on this issue was Amicus Sanai in the petition for certiorari filed *sub nom. Sanai v. Sanai,* Docket No. 05-991, addressing an unpublished disposition by Judge Beezer that refused to follow or acknowledge the published decision he signed, *Mothershed.* Be that is may, this case provides a vehicle for this Court to finally resolve the uncertainty involving the *Rooker-Feldman* doctrine by adopting the comprehensive test for its application which follows.

2. This Court Should Articulate a Comprehensive Test for Application of the *Rooker-Feldman* Doctrine.

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* (reversing prior

precedent recognizing fraud exception) *with Kougasian*, *supra* (re-affirming fraud exception based on *Barrow v. Hunton, supra*). The circuit courts are even divided as to whether *Rooker-Feldman* applies when state proceedings are ongoing or not, an issue which this Court is considering at this moment in *T.M.* The Ninth Circuit issues published decisions which follow one rule and then for decades in unpublished dispositions goes the other way. *See CMLS Mgmt.* and *RLS Inv.*.

There are four reasons for the inconsistencies. First, the lower courts often do not grasp that *Rooker* is based on the common-law 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 jurisdiction challenge exception is not part of the common-law conception of original jurisdiction or of appellate function and thus cannot be derived from the historical common-law origins supporting *Rooker*. Third, this Court has not issued a comprehensive test for its application. Fourth, in the Ninth Circuit, the published precedents of this Court and the Ninth Circuit itself are regularly ignored in unpublished dispositions pursuant to the quasi-heraldic Circuit motto coined by the late Judge Stephen Reinhardt: "They can't catch 'em all." Sam Roberts, *Stephen Reinhardt, Liberal Lion of Federal Court, Dies at 87*, N. Y. Times, April 3, 2018, at B13.

Amici propose 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 as follows:

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 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.

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*. 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?

Answer 4: If it is alleged that a claim was obtained by extrinsic or intrinsic fraud, that claim is not subject to *Rooker-Feldman*. If there are other claims, go to Question 5.

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*. 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*. 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.

Amici's 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 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 rules, as authoritatively applied in accordance with its terms, is unconstitutional on an as-applied, overbreadth, or facial basis.

On the other hand, *Rooker-Feldman* bars attacks 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.

3. The *Searle* Court's Mootness Analysis Conflicts with Supreme Court Precedent.

The *Searle* panel held that the change in Arizona law rendered the facial claim moot. "[I]n instances where [a case's] mootness is attributable to a change in the legal framework governing the case, and where the plaintiff may have some residual claim under the new framework that was understandably not asserted previously," this Court has counseled that the best "practice is to vacate the judgment and remand for further proceedings in which the parties may, if necessary, amend their pleadings or develop

the record more fully." *Lewis v. Cont'l Bank Corp*., 494 U.S. 472, 482 (1990). The Ninth Court should have given Searle the opportunity to assert amended retroactive claims, which may include recission of deeds transferring the property.

CONCLUSION

The Court should address the *Rooker-Feldman* issue, explicitly disapprove the Ninth Circuit's *Rooker-Feldman* analysis in *Searle*, hold that this Court has jurisdiction to resolve Pung's action, and in so doing, articulate a comprehensive test for application of the *Rooker-Feldman* doctrine as outlined above.

If the Court is interested in additional input on the proposed comprehensive test, it should issue an order permitting direct intervention in this certiorari proceeding only by Amici Sanai.

Dated this December 4, 2025.

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 Amici