25-961

IN THE
Supreme Court of the United States

PEYMAN ROSHAN, *Petitioner*,

v.

CHRISTINE M. SEARLE, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CASE NO. 24-4819

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On October 3, 2025 this Court granted the petition for certiorari in *Pung v. Isabella Cty., Mich.* Case No. 25-95 ("*Pung*") where a homeowner mounted a federal court constitutional challenge to the tax sale of his home for less than its fair market value. Mr. Pung had previously lost a state court challenge to the sale, and thus was a state court loser challenging a state court judgment on the grounds that it was unconstitutional. Eight weeks before, in this case, the Ninth Circuit refused to allow Petitioner Peyman Roshan to intervene in order to challenge a published decision holding that an Arizona homeowner making a similar constitutional challenge in a virtually identical procedural position in the Arizona federal district court after losing in state court was barred by the *Rooker-Feldman* doctrine. *Searle v. Allen,* 148 F.4th 1121 (9th Cir. 2025) ("*Searle*"). Under the Ninth Circuit's interpretation of *Rooker-Feldman* in *Searle*, this Court lacks jurisdiction to decide *Pung*.

The questions presented are:

1. Does a federal district court lack jurisdiction under the *Rooker-Feldman* doctrine where a state-court loser of a challenge of a tax sale of the loser's home brings a federal lawsuit challenging the constitutionality of the state statues and rules governing the tax sale?

2. Does the Ninth Circuit's application of the *Rooker-Feldman* doctrine and dismissal of the as-applied challenge of Searle in this

case conflict with this Court's most recent *Rooker-Feldman* application in *Reed v. Goertz,* 143 S.Ct. 955 (2023) holding that a federal district court has jurisdiction to hear federal claims from a state court loser asserting the unconstitutionality of the state's statutes and rules as authoritatively interpreted in the state court, as such claims are "general challenges" or "general attacks" allowed under *District of Columbia Court of Appeals v. Feldman*, 460 U. S. 462 (1983)?

3. Is the Ninth Circuit's holding that the facial challenge against Arizona's tax sale statute is moot erroneous under this Court's decision in *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 482 (1990)?

4. Given this Court's recent emphasis on the party presentation principle, do both due process and sound appellate administration require that litigants, whose past or ongoing case would be controlled by a precedential Court of Appeals decision in a separate case in which the litigants are not parties, be allowed as a matter of right to raise new arguments or approaches that the parties to the precedential decision overlooked or declined to raise?

PARTIES TO THE PROCEEDING

Petitioner (appellant intervenor movant) is Peyman Roshan.

Respondents (parties below) are Christine M. Searle (plaintiff and appellant below); and John M. Allen, County of Maricopa, Arapaho, LLC, and American Pride Properties, LLC (defendants and appellees below).

RELATED PROCEEDINGS

In the Supreme Court of the United States:

1. *Pung v. Isabella County, Mich.*, No. 25-95.
2. *T.M. v. University of Maryland Medical System Corp.*, No. 25-171.
3. *First Choice Women's Resource Centers v. Platkin,* No. 24-781.

In the United States Court of Appeals for the Ninth Circuit:

1. *Roshan v. Sunquist, et al.*, No. 25-3157.
2. *Roshan v. Lawrence, et al.*, No. 24-7429.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Peyman Roshan respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is in the appendix (Appendix ("App."), *infra*, B1-B24) and published at 148 F. 4th 1121; and the order denying intervention is in the appendix (App., A1).

JURISDICTION

The court of appeals opinion was published on August 28, 2025 and it denied Petitioner's request to intervene on September 30, 2025. This Court's jurisdiction is provided by 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This petition concerns the *Rooker-Feldman* doctrine. Many cases assert that this doctrine's jurisdictional restriction arises from a negative implication of 28 U.S.C. § 1257 which gives the Supreme Court jurisdiction to review the "[f]inal judgments or decrees rendered by the highest court of a State," *id.*, and 28 U.S.C. §§ 1331, 1332, which provide district courts have only "original jurisdiction" in federal-question and diversity cases, *id.*

STATEMENT OF THE CASE

Christine Searle failed to pay about $1,600 in property taxes on her home in Maricopa County, Arizona, which she estimates is worth over $400,0000. *Searle v. Allen*, 148 F.4th 1121, 1125 (9th Cir. 2025) ("*Searle*"); Appendix ("App.") B4. Pursuant to state law, to secure payment, Maricopa County enforced the tax liens it had placed on Searle's property to a private purchaser, Arapaho, LLC Tesco, *id.* at 1026, App. B6; and pursuant to state

law, Arapaho ultimately filed a foreclosure action against Searle. *Id.*, App., B6. When Searle failed to respond, Arapaho obtained a default judgment against her. *Id*, App., B6. Pursuant to state law, the judgment declared that Searle has "no further legal or equitable right, title, or interest in the Property." *Searle* at 1125, App. B4. 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. *Id.*, App. B4. Arapaho promptly transferred the property to American Pride Properties, LLC. *Id.*, App. B4.

After entry of the default judgment, Searle appeared and moved to set aside the judgment on the ground that she did not receive notice of the foreclosure action. *Searle* at 1126; App. B6. The state court denied the motion and Searle appealed; the Arizona Court of Appeals affirmed. *Id.*, App. B6. The Arizona Supreme Court denied review. *Id.*, App. B6

After the Arizona Supreme Court denied Searle's petition for review, she sued Arapaho, American Pride, Maricopa County, and Allen (collectively, "Defendants") in federal 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). *Searle* at 1126; App. B7-8. She alleged both federal and state claims, seeking damages, an injunction against eviction, and a declaratory judgment that the statute was unconstitutional. *Searle* at 1126; App. B8.

Defendants moved to dismiss Searle's complaint under Federal Rule of Civil Procedure Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim. *Searle* at 1127; App. B9. Searle responded, inter alia, by citing this Court's holding in *Skinner v. Switzer,* 562 U.S. 521, 532 (2011)("*Skinner*") that, under *Rooker-Feldman*, "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," *id.*, and arguing that such challenges are not the type of "appellate review" of state court judgments to which the *Rooker-Feldman* applies. Searle also argued that *Rooker-Feldman* does not apply merely because the state court interpreted the statute challenged in the federal action (citing *Skinner* holding that "Skinner does not challenge the adverse CCA decision themselves, instead, he targets as unconstitutional the Texas statute they authoritatively construed," *id.*).

The district court rejected this argument and determined that the *Rooker-Feldman* doctrine barred Searle from raising her constitutional claims in federal court and granted Defendants' motion to dismiss. *Searle* at 1125; App. B4-5.

Searle's Ninth Circuit opening brief, inter alia, cited this Court's recent rejection of applying the *Rooker-Feldman* doctrine when the plaintiff does "not challenge the adverse state-court decisions themselves, but rather targets as unconstitutional the Texas statute they authoritatively construed." *Searle v. Allen*, 9th Cir. Case No. 24-4819, Dkt. No. 12, Sep. 16, 2024 (citing *Reed v. Goertz*, 598 U.S. 230, 235(2023)("*Reed*").

Since Searle had properly presented these dispositive arguments, Petitioner Roshan had no need to seek to intervene at that stage.

On August 28, 2025, the Ninth Circuit, however, affirmed the district court's dismissal in part relevant to Petitioner Roshan's motion to intervene, and reverse it in part. *Searle* at 1125; App. B5. It affirmed, by erroneously concluding that Searle's attacks on the foreclosure sale alleging that it violated the United States and Arizona Constitutions because it was a taking without a legitimate public purpose or constituted an excessive fine—were barred under *Rooker-Feldman* for being direct attacks on the state judgment which had "foreclosed Searle's right to redeem 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." *Searle* at 1130; App. B15. Her claims challenging Defendants' post-judgment retention of the surplus equity were held not barred given the Supreme Court's recent decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023). *Searle* at 1131; App. B18. Her facial challenge to the constitutionality of the governing statute was held not barred by *Rooker-Feldman*, but was held moot because Arizona has amended the challenged law. *Searle* at 1134; App. B22.

The following day, on August 29, 2025, Petitioner Roshan contacted Searle's counsel to determine whether they intended to seek request rehearing of the Ninth Circuit's order, and to inform that if they did not so intend, that he would be moving to

intervene so he could do so. *Searle v. Allen*, 9th Cir. Case No. 24-4819, Dkt. No. 66. Roshan was directly affected by *Searle* because of his pending petitions before the Ninth Circuit Court of Appeals attacking District Court decisions which employ the same defective *Rooker-Feldman* analysis. 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.

On September 2, 2025, Searle's counsel responded that due to their present leanings, Petitioner Roshan should proceed as though they do not intent to request rehearing.

On September 10, 2025, Petitioner Roshan filed a motion to intervene to file the concurrently submitted petition for rehearing and rehearing en banc.

On September 30, 2025, the Ninth Circuit denied Petitioner Roshan's motion to intervene to petition for rehearing and rehearing en banc. *Searle v. Allen*, 9th Cir. Case No. 24- 4819, Sept. 30, 2025; App. A1.

ARGUMENT

A. *Searle* Articulates an Interpretation of *Rooker-Feldman* Requiring Dismissal of the Pending Petition in *Pung*.

In *Searle*, the Ninth Circuit articulated an interpretation of the *Rooker-Feldman* doctrine which would require dismissal of the petition for certiorari pending in *Pung v. Isabella Cty., Mich.* Case No. 25-95 ("*Pung*"). *Searle* affirmed the district court's ruling that the *Rooker-Feldman* doctrine bars a person whose property is sold in a tax auction from suing the state entity to challenge the state action after losing a challenge to the sale in state court. That is 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?

Pung, Brief For Petitioner at i., Dec. 1, 2025.

The Ninth Circuit's *Rooker-Feldman* analysis in *Searle* would, if applied to *Pung*, require this Court to

dismiss the action for lack of jurisdiction. *Searle* 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.

> 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 that a "general attack" or "general challenge" of state law under *District of Columbia Court of Appeals v. Feldman*, 460 U. S. 462 (1983) ("*Feldman*") is within the original jurisdiction of federal district courts. However, the Ninth Circuit 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 Petitioner 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.

The Ninth Circuit's approach would require this Court to dismiss the *Pung* certiorari proceeding currently before it. As in Searle's case, the law

changed during Pung's litigation. In the opposition to the petition for certiorari, Isabella County explained that 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, and does not claim to be, a 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*. Roshan, together with Cyrus Sanai, filed a timely amicus brief in *Pung* to ensure that this Court was aware of the problem. However, disposing of the jurisdictional issue in *Pung* will not vacate the Ninth Circuit's generally defective *Rooker-Feldman* analysis, which already ignores this Court's published precedent in *Reed* and *Skinner*.

B. 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, presented in *Feldman*, is that 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 Barrow added in *Kougasian*), quoting *Barrow, supra.*

The respective scopes of original jurisdiction and appellate jurisdiction thus overlap in several areas. One overlap is a collateral attack on a judgment for fraud on the court. A second is a collateral attack on a judgment for lack of personal or subject matter 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 personal and subject matter jurisdiction by a state court rendering a judgment a prerequisite to protecting that judgment via *Rooker-Feldman*. Just one year after *Rooker*, this Court made clear that federal district courts can entertain independent actions that attack state-court judgments as void for lack of jurisdiction. *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 challenge" or "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" two possible interpretations. The first for *Rooker-Feldman* purposes is where 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), such decision is immune if other conditions for application of *Rooker-Feldman* apply; in contrast, 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* if other conditions for is application are met; however, an attack for facial unconstitutionality, including overbreadth, is not barred.

Published Ninth Circuit case law took the second interpretation, i.e., facial attacks are not barred, as-applied attacks are. *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)("*Williamson County*"). 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. *Id.* at 193-4.

The question still remained, however, whether the federal court had jurisdiction under *Rooker-Feldman* when the state-court loser brought an as-applied challenge to federal court. 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 state judicial takings in federal court 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").
>
> .....
>
> ....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).

2. The Ninth Circuit's *Rooker-Feldman* Jurisprudence is Split Between Published Precedent and Unpublished Anti-Precedent.

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. In the latter, the Ninth Circuit decides cases using "Anti-Precedent" which are a mixture of unpublished dispositions and prior

published authority overruled by this Court or the Ninth Circuit itself.

The longest-standing refusal regards a question which this Court agreed to consider last month in *T.M. v. University of Maryland Medical System Corp.*, Case No. 25-171 ("*T.M.*"): whether the *Rooker-Feldman* doctrine bars a federal district court lawsuit seeking relief that would negate or interfere with an interlocutory decision of a pending state court proceeding. *Id.*

The petition for certiorari filed in *T.M.* does not cite or discuss any Ninth Circuit case law. 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).

T.M., Petitioner's Reply, November 5, 2025.

The contention by the attorneys for petitioner T.M. that the circuit split emerged in 2021 is false. The first time the refusal to follow the majority rule on this issue was presented by Cyrus Sanai in 2005 in a petition for certiorari filed *sub nom. Sanai v. Sanai,* Docket No. 05-991 ("*Sanai*"), addressing an unpublished disposition by Judge Beezer that refused to

follow or acknowledge the published decision he signed, *Mothershed v. Justices of the Supreme Court,* 410 F.3d 602 (9th Cir. 2005) ("*Mothershed*").

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 in other 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* at 604 n. 1, 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 Industries*").

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* and *Sanai*, *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.*")(citing *Exxon Mobil* as "*Exxon*").

Petitioner T.M. obtained review in this court by highlighting the circuit split in *RLR Invs.* and in *T.M.* itself. However, T.M.'s successful 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.

There's no reason to believe that the Ninth Circuit will follow the result in *T.M.* if the petitioner is successful; likewise, if Mr. Pung succeeds, this Court's ruling in his favor will not be applied in the Ninth Circuit because anyone asserting its holding will have its claim dismissed as outside the subject-matter jurisdiction of the district court under *Searle.* Accordingly, granting review in this case is necessary to give full recognition to the Ninth Circuit's decades of scorning this Court's precedents or its own published precedents when a three-judge panel puts the result in an unpublished case, which is the first step to stopping this practice.

attack." *Searle* at 1129-34. However, because Searle won against the private defendants, any rehearing en banc could, in theory, result in Searle losing the *Rooker-Feldman* issue and a different outcome against the private defendants, against whom Searle was successful in the panel opinion. It therefore was entirely rational for Searle to decline to file a rehearing petition. But even if she had, the party presentation principle, if applied by the en banc panel, would have restricted the panel from considering the comprehensive test proposed by Roshan.

The due process problem is exacerbated where there are multiple simultaneous cases involving the same legal issues, as in *Trump v. Illinois*, *supra*. The first case to present an issue is not necessarily the best litigated case and parties can miss critical issues This can lead to grossly inappropriate judicial action: Senior Circuit Judge Bybee, in the Oregon National Guard deployment litigation, brazenly violated the party presentation principle in the upcoming en banc proceeding by creating an entirely new constitutional analysis supporting rejection of the Trump Administration's view in a published opinion concurring in the grant of en banc review. *See* Amended Order, *Oregon v. Trump,* Docket No. 25-6268 (9th Cir. Dec. 8, 2025) at 2 ("I have issued this statement in support of en banc review—a statement that is unusual, but not unprecedented—because I believe that the parties have overlooked a clause in the Constitution that is of great relevance to the resolution of this case: the Domestic Violence Clause.")(footnote omitted).

Interventions on appeal are governed solely by case law. *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S.Ct. 1002, 1009 (2022). The considerations include whether the party seeking intervention has an interest in the outcome, whether the intervenor sought intervention as soon as it became clear his interests would not be protected, and whether intervention would prejudice the opposing side. *Id.*

Roshan meets all three requirements for intervention. Because of his ongoing lawsuits in the Ninth Circuit that were dismissed on *Rooker-Feldman* grounds that are in conflict with *Skinner* and *Reed,* Roshan has an interest in the Ninth Circuit's published case law correctly articulating the application of the doctrine. As for timeliness, Roshan moved to intervene as soon as he was informed that it was not likely that Searle would file a petition for rehearing. As to prejudice, neither side are prejudiced by this Court's consideration of an issue actually decided by the Ninth Circuit panel. While Roshan's comprehensive test does introduce new issues, the Court's formulation of a comprehensive test will not alter the outcome in this case.

In holding that the Sixth Circuit erred in denying intervention in *Cameron,* this Court emphasized that there were important underling constitutional issues of state sovereignty implicated. The federal due process issues are even more important, because states, unlike individuals, are granted much more deference by the legal system and are repeat players on most issues, having many chances to tackle an issue. Individuals have many fewer opportunities to force the lower courts to recognize the correct

position on the law. This means that waiver of an argument or ignorance of an issue by a third party can result in an individual's rights being substantially prejudiced by the tactics or incompetence of such third party.

Petitioner therefore proposes that this Court adopt a new rule to provide redress for private entities or individuals who are prejudiced by the failure of unrelated litigants to fully and competently raise and pursue all issues. At the Courts of Appeals level, a private entity or person who files a timely motion for intervention within the time period for filing a rehearing petition after a precedential opinion is issued should be presumptively allowed to intervene if he articulates new, potentially meritorious arguments or dispositive matters regarding an issue decided in the opinion, and shows that either he has raised the same issue in a prior appeal that was disposed of in an unpublished disposition or that the issue would likely affect an ongoing action in which that person is a party.

At the level of this Court, a person who files a timely motion for intervention should be presumptively allowed to intervene if he articulates new arguments or dispositive matters and shows that either he has raised the same issue in a prior petition for certiorari that was denied, the issue would likely affect an ongoing case to which the person is involved, or the intervenor has special knowledge or expertise from which new arguments are drawn (as appears to have occurred with the submission by Prof. Lederman in *Trump v. Illinois, supra.*)

Expansion of the right to intervene will ensure that stare decisis and the party-presentation principle are applied without injuring the due process rights of litigants who are otherwise sandbagged by new, badly decided case law due to the incompetence of a lawyer who addressed an issue before the litigant with the more competent lawyer or a smart tactical decision as in this case, where Searle's lawyer presumably chose not to file an en banc petition because of the possibility the en banc panel would reverse the three-judge panel's judgment against the private defendants in *Searle*.

CONCLUSION

The Court should grant certiorari to address the questions presented.

Dated this January 5, 2026.

Respectfully submitted,

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