18-0337-cv

United States Court of Appeals
for the
Second Circuit

SUNG CHO, Individually and on behalf of all others similarly situated,
NAGLE WASHRITE LLC, Individually and on behalf of all others similarly situated,
DAVID DIAZ, Individually and on behalf of all others similarly situated,
JAMEELAH EL-SHABAZZ, Individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

– v. –

CITY OF NEW YORK, MAYOR BILL DE BLASIO, in his official capacity as Mayor of the City of New York, NEW YORK CITY POLICE DEPARTMENT, POLICE COMMISSIONER JAMES P. O'NEILL, in his official capacity as New York City Police Commissioner, NEW YORK CITY LAW DEPARTMENT, ZACHARY W. CARTER, in his official capacity as Corporation Counsel of the City of New York,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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INTRODUCTION

Perhaps the most important aspect of the City's brief is what it does not say: The City nowhere asserts that Plaintiffs could have challenged the waivers of constitutional rights in their settlement agreements by appealing the judgments so-ordering the settlements. This matters because—as Plaintiffs' Opening Brief explained—the purpose of *Rooker-Feldman* is to protect the exclusive appellate jurisdiction of the U.S. Supreme Court. The Supreme Court cannot have exclusive appellate jurisdiction over a case that could not have been pursued as an appeal. That simple proposition is sufficient to dispose of this case.

Precisely because this case does not implicate *Rooker-Feldman*'s rationale, it also does not meet the Second Circuit's test for the doctrine. All four prongs of the test must be satisfied for *Rooker-Feldman* to apply, but in this case the *only* prong that is satisfied is the requirement that the state-court judgments predate the federal case.

First, Plaintiffs do not complain of injuries caused by state-court judgments. *See infra* pp. 7-17. Although the City accuses Plaintiffs of running away from the allegations of the Complaint, the truth is the Complaint charged the City (*not* the state courts) with violating the unconstitutional conditions doctrine by conditioning offers to settle nuisance eviction cases on Plaintiffs' agreement to waive their rights. The challenged waivers were extracted by the City and ratified by the state

courts, placing the case squarely within this Court's holding that *Rooker-Feldman* does not apply simply because an injury is "ratified, acquiesced in, or left unpunished by" a state-court judgment. *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 88 (2d Cir. 2005).

Second, Plaintiffs are not "state-court losers," as they were not in a position to appeal the judgments so-ordering their settlements. *See infra* pp. 17-22. The City cites a passel of non-binding cases as support for a broader definition of a state-court loser. The problem for the City, however, is that the Supreme Court and the Second Circuit have refused to apply *Rooker-Feldman* to parties who were not in a position to appeal, and the City offers no reason to disregard that authority.

Finally, Plaintiffs do not seek review and rejection of a state-court judgment, as Plaintiffs do not claim the state courts erred and do not seek to undo the state-court judgments. *See infra* pp. 23-27. Instead, like any party to a contract containing unlawful or unconscionable provisions, Plaintiffs have sued for declaratory and injunctive relief barring the other party to the contract from enforcing those provisions in the future.

Ultimately, this is a straightforward case. The Supreme Court has held that *Rooker-Feldman* must be "confined" to the "narrow ground" occupied by its rationale. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284

(2005).[1] Because this case is not a *de facto* appeal from a state-court judgment, that rationale does not apply, and the decision below must be reversed.

ARGUMENT

This brief proceeds in two parts. Part I addresses the purpose behind *Rooker-Feldman*, explaining that this case does not implicate the doctrine's basic rationale. Then, Part II addresses the four-part test applied by the Second Circuit, explaining that three of the four parts are not satisfied.

I. This Case Does Not Implicate *Rooker-Feldman*'s Basic Rationale.

Plaintiffs' Opening Brief explained that *Rooker-Feldman* does not apply for the simple reason that this case is not a *de facto* appeal. *See* Op. Br. 24-28. In response, the City effectively concedes the factual premise of the argument: Plaintiffs' Opening Brief cited cases holding that a party to a state-court settlement must challenge the agreement in trial court, not by appealing the judgment so-ordering the settlement, *see id.* at 27, 40-41, and the City's Response Brief does not even attempt to argue otherwise.

That concession provides a sufficient basis to decide this case. The *Rooker-Feldman* doctrine holds that the Supreme Court's jurisdiction to hear appeals from

[1] The Supreme Court's limitation of *Rooker-Feldman* was sufficiently sweeping that a legal journal published an obituary for the doctrine. *See* Samuel Bray, *Rooker Feldman*, 9 Green Bag 317, 317 (2006) ("Rooker Feldman, the legal personality, died yesterday at his home in Washington, D.C. He was 83.").

state-court judgments is exclusive of other federal courts: While district courts generally have jurisdiction to hear any case raising a federal claim, they cannot hear *de facto* appeals from state-court judgments, as the proper way to pursue such a case is to appeal all the way up to the Supreme Court. *Exxon Mobil*, 544 U.S. at 291; *see also Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam). That rule is not implicated here, as the Supreme Court cannot have exclusive appellate jurisdiction over a case that could not have been brought as an appeal.

The City, however, urges an alternate theory of *Rooker-Feldman*, under which the doctrine exists to protect state-court judgments from interference by the federal courts. *See* Resp. Br. 23-24. In the City's telling, any claim that would "reverse or modify state court judgments" triggers *Rooker-Feldman*, as "[s]uch review equates to the exercise of appellate power." *Id.* at 23. Thus, in the City's view, the fact that Plaintiffs could not have appealed the judgments so-ordering their settlements "makes their attempt to take a *de facto* appeal of the settlements in federal court more problematic, not less." *Id.* Tellingly, the City does not cite a single case to support these assertions.

The problem with the City's arguments is that they are directly contrary to the Supreme Court's opinions in *Exxon Mobil* and *Lance*. Those cases explain that the finality of state-court judgments is determined by state preclusion law—not by *Rooker-Feldman*—as federal courts give state-court judgments the *same* preclusive

effect as the courts of the state. *See Exxon Mobil*, 544 U.S. at 293; *Lance*, 546 U.S. at 464.[2] In *Exxon Mobil*, the Court warned that *Rooker-Feldman* should not be allowed to "override or supplant preclusion doctrine," 544 U.S. at 284, and in *Lance* the Court held that "*Rooker-Feldman* is not simply preclusion by another name," 546 U.S. at 466. The City's arguments conflate *Rooker-Feldman* with preclusion, which is exactly what *Exxon Mobil* and *Lance* say not to do.

The City protests that, if *Rooker-Feldman* is limited to its rationale, it may not apply in circumstances where the City thinks it should. *See* Resp. Br. 23-28. The City posits "a scenario in which a state law forbade parties to appeal" and complains that, "[u]nder plaintiffs' reasoning," a plaintiff could bring a case challenging an unappealable merits decision. *Id.* at 23. But the City never explains why this hypothetical should cause concern. Assuming a state was able to insulate a class of state-court judgments from Supreme Court review, then the Supreme Court's exclusive jurisdiction would not be implicated and the finality of the state-court judgments would be a question for preclusion doctrine.

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[2] The City has never argued that Plaintiffs' claims are barred by preclusion. And for good reason. State law is clear that preclusion would not apply. *See, e.g.*, *Wie v. Wie*, 124 A.D.2d 353, 354 (N.Y. App. Div. 1986) (preclusion does not bar challenge to settlement agreement allegedly procured through improper means); *see also Bryant v. Carty*, 118 A.D.3d 1459, 1460 (N.Y. App. Div. 2014); *Sacks v. Sacks*, 220 A.D.2d 736 (N.Y. App. Div. 1995). Even if that were not the case, moreover, a judgment that violates due process cannot be given preclusive effect. *See Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 482 (1982).

Because the City's arguments transform *Rooker-Feldman* into what amounts to a federalized preclusion law, they threaten to improperly "overrid[e] Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts." *Exxon Mobil*, 544 U.S. at 284. As a general matter, state and federal courts both have jurisdiction over federal claims, meaning a plaintiff can choose where to file. By contrast, while the City has conceded that Plaintiffs could pursue their claims in state trial court, *see* Op. Br. 27, the City claims Plaintiffs are barred from bringing those same claims in federal trial court. Worse, the City's arguments would mean that *any* challenge to a stipulated settlement must proceed in state court. The City offers no justification for such a sweeping limitation on the jurisdiction of the federal courts.[3] If a claim can be appealed to the Supreme Court, then, under *Rooker-Feldman,* it must be pursued as an appeal. But if a claim is not the equivalent of an appeal, then *Rooker-Feldman* does not apply. The judgment below cannot be squared with these basic principles and must be reversed.

[3] Federal courts regularly hear challenges to state-court settlements, so long as the claims fall within their jurisdiction. *See, e.g.*, *State Indus., Inc. v. Fain*, 61 F. App'x 119 (5th Cir. 2003) (claim seeking to have settlement declared "null and void"); *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 707 (E.D. Pa. 2015) (constitutional challenge to state-court settlements); *City of Oceanside v. AELD, LLC*, No. 08-cv-2180, 2010 WL 11508460, at *6 (S.D. Cal. Oct. 14, 2010) (statutory challenge to state-court settlement); *Machal, Inc. v. Jena Band of Choctaw Indians*, 387 F. Supp. 2d 659, 661 (W.D. La. 2005) (same).

II. This Case Does Not Meet The Second Circuit's Test For Application Of *Rooker-Feldman*.

Moving from foundational principles to the Second Circuit's four-prong test for *Rooker-Feldman*, the Opening Brief explained that three of the four prongs are not satisfied. Nothing the City says undermines that conclusion.

A. Plaintiffs' Injuries Were Caused By The City, Not By The State-Court Judgments.

This Court has said that the "key" prong in its test is whether plaintiffs complain of an injury caused by a state-court judgment; moreover, an injury is not "caused" by a state-court judgment simply because it is "ratified, acquiesced in, or left unpunished." *Hoblock*, 422 F.3d at 87-88. Plaintiffs' Opening Brief explained that this case falls within that rule: Plaintiffs' injuries were caused by the City's unconstitutional demands that they waive their rights and were at most ratified by the state courts that so-ordered the resulting agreements. *See* Op. Br. 28-38. Indeed, Plaintiffs cited a string of cases that adopted precisely this rationale on analogous facts. *See id.* at 30-34.

In response, the City strives to transform this case from an attack on the City's settlement tactics into an attack on the state courts. *See* Resp. Br. 24-36. This attempt takes two forms: first, the City misreads the Complaint as directed at the state courts, *id.* at 25-27, and, second, the City conflates the City's settlement tactics with the resulting state-court judgements, *id.* at 27-30. Both arguments fail.

Plaintiffs' claims are directed at the City's settlement tactics, not the ratification of those tactics by the state courts.

i. Plaintiffs' Complaint Is Targeted At The City's Conduct, Not At The State Courts.

The City's first attempt to transform the case focuses on the Complaint. The City asserts that "plaintiffs' complaint alleged that *state court judgments* implementing their settlement agreements caused their injuries." Resp. Br. 1 (emphasis added). According to the City, Plaintiffs now seek to "transform their pleadings" and "relocate the cause of their injuries." *Id.* at 27-28. But it is the City, not Plaintiffs, that mischaracterizes the Complaint.

Plaintiffs' Complaint consistently challenges the City's conduct in settlement negotiations. The first paragraph explains that "[t]his is a case about a lumbering and indiscriminate *law enforcement program* that forces ordinary, innocent people to waive their constitutional rights." A-15 ¶ 1 (emphasis added). Specifically, "*city officials* file no-fault eviction actions against individuals who have not been convicted of the underlying alleged crime and who bear no responsibility for the alleged criminal conduct." A-36 ¶ 104 (emphasis added). Rather than "seek to litigate these eviction actions to a final decision," "*city officials* file these actions in order to pressure property owners and leaseholders to enter into settlement agreements waiving constitutional rights." A-36 ¶ 109 (emphasis added). And finally, "*[t]he City's* policy or practice of requiring

innocent leaseholders and property owners to waive their [rights] violates the Due Process Clause of the Fourteenth Amendment." A-57-60 ¶¶ 190, 198, 206 (emphasis added). These allegations—and the other allegations in the Complaint—challenge the City's conduct extracting waivers of constitutional rights.

When the City moved to dismiss the Complaint, Plaintiffs elaborated on their legal theory, and Plaintiffs' arguments once again focused on the City's conduct in settlement negotiations. Plaintiffs explained:

> The unconstitutional conditions doctrine applies when government threatens to "withhold [a] benefit," or refuse some other discretionary action, "because someone refuses to give up constitutional rights." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2596 (2013). . . .
>
> Plaintiffs have stated a claim under the unconstitutional conditions doctrine because they allege that the City conditioned a discretionary act—withdrawal of the threat of eviction—on agreements to waive constitutional rights. . . Courts hold that the doctrine applies to conditions imposed in the settlement context, as it would "vitiate the unconstitutional conditions doctrine to conclude that it cannot apply to an offer of settlement." *Stephens v. Cty. of Albemarle*, No. 04-cv-81, 2005 WL 3533428, at *6 (W.D. Va. Dec. 22, 2005) . . . .

D.E. 53 at 8. Again, Plaintiffs challenged *the City's* settlement tactics, not the state court decisions ratifying the resulting agreements. "[T]he City," *not* the state courts, "violated the unconstitutional conditions doctrine when it used the threat of eviction to force innocent people—people not convicted of a crime—into perpetual waivers of constitutional rights." *Id.* at 12-13.

The quotes the City pulls from Plaintiffs' Complaint are not remotely to the contrary. For instance, the City quotes Plaintiffs' allegation that "Plaintiffs are subject to *settlement agreements* under which they have agreed to perpetual waivers of their constitutional rights," and that "[t]hese *agreements* constitute an ongoing injury." Resp. Br. 25 (quoting A-33 ¶ 94) (emphasis added and omitted). Likewise, the City highlights the allegation that "the *settlement agreement* reduces the value of [Sung Cho's] business," that "[b]ut for the *agreement*, [David Diaz's] brother Rafael would live with [David] in the apartment," and that "[b]ut for the *agreement*, [Jameelah El-Shabazz] would never exclude her son from her home." *Id.* at 26 (quoting A-34-35 ¶¶ 97, 100, 102) (emphasis added). These allegations all focus on the settlement agreements extracted by the City, not the state-court judgments so-ordering the agreements. The City could eliminate *all* of these injuries by committing not to enforce the agreements.

The City cites two cases that it says applied *Rooker-Feldman* to similar allegations, *see* Resp. Br. 27-28, but in fact both cases involve claims targeted at a state court's legal rulings, rather than a party's conduct. The plaintiff in *Fraccola v. Grow*, 670 F. App'x 34, 35 (2d Cir. 2016) (summary order), sued a state-court judge on the ground that the judge had made erroneous legal rulings and "violated his rights by so-ordering a stipulated settlement." And the plaintiffs in *Niles v. Wilshire Investment Group, LLC*, 859 F. Supp. 2d 308, 335-36 (E.D.N.Y. 2012),

likewise alleged that their injuries were caused by a state-court judge who "impos[ed] a one-sided settlement" by "relying on fraudulent documents" and was "thereafter rewarded . . . with help in procuring an appointment." When a party claims to have been injured by a state court's rulings—and even names a state-court judge as a defendant—there is no question the party's injuries were caused by a state-court judgment. But Plaintiffs' Complaint alleges nothing of the sort.

Instead, this case closely resembles cases—cited in the Opening Brief—that find *Rooker-Feldman* inapplicable to claims challenging a party's conduct obtaining a settlement. *See* Op. Br. 30-34. The City says these cases can be distinguished because they involve plaintiffs who were "subjected to harm independent of the order or settlement." Resp. Br. 30. In fact, however, the plaintiff in each case was injured because the defendant's conduct produced harmful settlement terms: In *Green v. City of New York*, 438 F. Supp. 2d 111, 120-21 (E.D.N.Y. 2006), the City miscalculated lien amounts that were included in stipulated settlements; in *Arnett v. Arnett*, No. 13-cv-1121, 2014 WL 2573291, at *1-2 (D. Utah June 9, 2014), the defendant coerced the plaintiff into signing a settlement containing a general release; in *Capela v. J.G. Wentworth, LLC*, No. 09-cv-882, 2009 WL 3128003, at *1, 6 (E.D.N.Y. Sept. 24, 2009), the defendants' alleged violations of the Truth in Lending Act led the plaintiff to sign a court-approved agreement modifying a settlement; and in *In re Chinin USA, Inc.*, 327

B.R. 325, 334-35 (N.D. Ill. 2005), the defendants negotiated settlement terms that amounted to a fraudulent transfer. In each case, *Rooker-Feldman* did not apply because the plaintiff's claims focused on the defendant's conduct extracting the challenged settlement terms, rather than the ratifying state-court judgments. Precisely the same reasoning applies here.[4]

ii. The City's Conduct Cannot Be Conflated With The Later State-Court Judgments.

The City's second attempt to transform this case is more subtle: In the City's view, the settlements "*are* state-court judgments," Resp. Br. 35 (emphasis added), and any injury caused by the City's negotiation of those agreements is also an injury caused by a state-court judgment. This argument fails, however, as the City's conduct—and the resulting agreements—cannot be conflated with the state-

[4] The City makes a few other miscellaneous attempts to distinguish these cases, but none lands home. The City claims *Arnett* is distinct because the agreement "was not adopted by a [state-court] decree," Resp. Br. 32, but in fact the opinion makes clear the agreement was effectuated by a divorce judgment. 2014 WL 2573291, at *2. The City would distinguish *Capela* on the ground that the plaintiff would have suffered a violation of the Truth in Lending Act even if the violation did not result in an enforceable agreement, Resp. Br. 32, but the same is true in this case with respect to the unconstitutional conditions doctrine. *See infra* p. 13. Finally, the City claims *Chinin* is distinct because "the state court had not reached the issue presented by the claim," Resp. Br. 42, but the constitutional claims here likewise were not presented to the state courts. The City also claims *Chinin* is distinct because it is a bankruptcy case, but the opinion does not rest on that ground. *See* 327 B.R. at 336. Courts disagree about whether *Rooker-Feldman* applies to bankruptcy cases, and *Chinin* does not reach that issue.

court judgments. Plaintiffs' injuries were caused by the City's conduct and only later ratified by the state courts.

First, the City's conduct cannot be conflated with the state-court judgments because that conduct injured Plaintiffs as soon as it occurred, even before Plaintiffs agreed to the settlement terms. As the Supreme Court explained in *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 606 (2013), "regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." If the City had not succeeded in depriving Plaintiffs of their constitutional rights, the City's negotiating tactics *still* would have violated the Constitution and given rise—at a minimum—to a claim for nominal damages. *See, e.g.*, *Amato v. City of Saratoga Springs*, 170 F.3d 311, 317 (2d Cir. 1999). The City asserts, as if it were discrediting, that "by [Plaintiffs'] logic, they would be able to claim some cognizable injury even if the state courts had *rejected* the stipulations of settlement," Resp. Br. 29, but that is exactly right. Plaintiffs suffered an injury as soon as the City demanded that they waive their rights.

Second, the settlement agreements cannot be conflated with the state-court judgments because the agreements have legal force as contracts even apart from their ratification by the state courts. State courts are clear that stipulated

settlements are first and foremost contracts between the parties. "A so-ordered stipulation is a contract between the parties thereto and, as such, is binding on them." *Fox Ridge Motor Inn, Inc. v. Town of Southeast*, 85 A.D.3d 785, 786 (N.Y. App. Div. 2011). Thus, the "terms of the stipulation . . . solely concerns a recitation of the penalties agreed upon . . . [and] contains no factual or legal findings." *37-01 31st Ave. Realty Corp. v. Safed*, 861 N.Y.S.2d 561, 566 (N.Y. Civ. Ct. 2008); *see also Jazilek v. Abart Holdings, LLC*, 72 A.D.3d 529, 532 (N.Y. App. Div. 2010) ("[A] representation in a stipulation—even a so-ordered stipulation—is not to be equated with a judicial finding."). The challenged settlement agreements are contracts between the City and the Plaintiffs, and as such they arose from the parties and were at most ratified by the state courts.

The independent legal significance of the agreements is vividly illustrated by the fact that two of the three agreements took effect as soon as they were signed by the parties. *See* Op. Br. 34-35 (citing A-142, 255).[5] In other words, Plaintiffs had to exclude family from the home, allow warrantless searches, and give up their right to access the courts *even before* the settlements were so-ordered by the state courts.

[5] The City says this Court should disregard the agreements' effective dates because they are "unpreserved." Resp. Br. 29. However, the settlement agreements are referenced in the Complaint, and the District Court took judicial notice of their terms. A-263 n.5. *See also United States v. Erie Cty.*, 763 F.3d 235, 242 n.7 (2d Cir. 2014) (explaining that plaintiffs do not raise a new argument on appeal simply because they cite "an additional *fact* in support of that argument").

The City claims that fact is irrelevant because the agreements were so-ordered "on the same day plaintiffs agreed to them," but the City does not cite any part of the record to back up this assertion. Resp. Br. 29. In fact, the record does not support it.[6] Even more fundamentally, the application of *Rooker-Feldman* does not turn on the length of time between the agreement's effective date and its ratification by the state courts. The effective date of the agreements is ultimately significant because it demonstrates that the agreements are contracts that cannot be conflated with the later state-court judgments.

Third, the City's attempt to conflate the City's conduct with the state-court judgments is contrary to numerous opinions holding that a challenge to a party's litigation conduct is not barred by *Rooker-Feldman* simply because the conduct succeeded in producing a state-court judgment. *See* Op. Br. 35-38 (citing cases). The City claims these cases are distinct because "the entry of a state court judgment was incidental to the defendants' misconduct or the plaintiffs' injuries," Resp. Br. 33, but in each case the state-court judgment was the intended goal of the defendant's conduct and an essential part of the plaintiff's injuries. In *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 75-76 (2d Cir. 2015), for instance, the

[6] One agreement was executed by the parties on September 29, 2011, and filed with the court on October 17, 2011, while the second was executed by the parties on December 23, 2013, and filed with the court on March 18, 2014. *See* A-140, 143, 250, 256.

defendants allegedly engineered a "default judgment mill" to obtain state-court judgments by unlawful means, and the plaintiffs were harmed because the defendants succeeded in that goal. Similarly, the defendants in *Friedman v. Self Help Cmty. Servs. Inc.*, 647 F. App'x 44, 47 (2d Cir. 2016) (summary order), made false statements in order to obtain a judgment involuntarily committing the plaintiff; the defendants in *Session v. Rodriguez*, 370 F. App'x 189, 191-92 (2d Cir. 2010) (summary order), procured false testimony in order to have the plaintiff jailed; and the defendants in *Gabriele v. Am. Home Mortg. Servicing, Inc.*, 503 F. App'x 89, 92 (2d Cir. 2012) (summary order), engaged in litigation misconduct in order to obtain a foreclosure judgment. In each case, *Rooker-Feldman* was inapplicable because the plaintiff's injuries were caused by the defendant's allegedly unlawful litigation conduct. The same is true in this case.

As a final argument, the City attempts to shift the focus of the causation inquiry from the source of Plaintiffs' injuries to the nature of the requested remedy, distinguishing the above cases on the ground that the plaintiffs did not "challenge the continued enforceability of the state-court judgments." Resp. Br. 35. In point of fact, Plaintiffs *also* do not seek to undo their state-court judgments. *See infra* pp. 23-25.[7] And, more fundamentally, the City's argument improperly conflates the

[7] Indeed, Plaintiffs' request for relief does not meaningfully distinguish this case from *Sykes*. On remand, the *Sykes* plaintiffs obtained relief refunding the

causation prong of *Rooker-Feldman* with the review-and-rejection prong. The Second Circuit has held that the two prongs are distinct: "[A] plaintiff who seeks in federal court a result opposed to the one he achieved in a state court does not, for that reason alone, run afoul of *Rooker-Feldman*," even if "the federal-court order, if granted, would seem to 'reverse' the state-court judgment," as the causation requirement must also be satisfied. *Hoblock*, 422 F.3d at 87; *see, e.g.*, *Green*, 438 F. Supp. 2d at 120-21 (while plaintiff sought review and rejection of state-court judgments, causation prong was not satisfied).[8] In this case, *Rooker-Feldman* does not apply because the challenged waivers of constitutional rights were caused by the City's unconstitutional conduct, not by the state courts.

B. Plaintiffs Are Not State-Court Losers.

The Court need go no further to resolve this case, as *Rooker-Feldman* only applies if each prong of the test is satisfied. However, Plaintiffs' Opening Brief explained that the decision below should also be reversed for the additional reason that Plaintiffs do not qualify as state-court losers, as they were never in a position

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amounts paid under the default judgments and preventing the defendants from collecting on those judgments in the future. *See* Findings of Fact and Conclusions of Law, *Sykes*, No. 09-cv-8486, D.E. 257 at 2, 9-10 (S.D.N.Y. May 24, 2016).

[8] The City cites two cases that it claims stand for the proposition that the requested remedy bears on the question of causation, *see* Resp. Br. 29-30, but both cases discussed the causation and review-and-rejection prongs together without clearly differentiating between them. *See Vossbrink v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014) (per curiam); *Zahl v. Kosovsky*, No. 08-cv-8308, 2011 WL 779784, at *6 (S.D.N.Y. Mar. 3, 2011).

to appeal a state-court judgment. *See* Op. Br. 38-43. In response, the City proposes a broader definition of a "state-court loser," asserting that *any* party claiming to be harmed by a state-court settlement qualifies as a "loser." Resp. Br. 19. The City's argument should be rejected, as the definition of "state-court loser" put forward in the Opening Brief is supported by binding Supreme Court and Second Circuit precedent, and the City offers no basis to disregard that authority.

i. A "State-Court Loser" Is A Plaintiff Who Was In A Position To Appeal A State-Court Judgment.

Plaintiffs' Opening Brief cited two key cases in support of its definition of a "state-court loser." *See* Op. Br. 39-40. First, Plaintiffs cited the Supreme Court's decision in *Lance*, 546 U.S. 459, which held that *Rooker-Feldman* did not apply to a plaintiff who was in privity with a party to a state-court judgment because the plaintiff was not in a "position to ask [the Supreme Court] to review the state court's judgment." *Id.* at 465 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994)). And, second, Plaintiffs cited *Green v. Mattingly*, 585 F.3d 97, 102-03 (2d Cir. 2009), which held that a plaintiff who was injured by an interlocutory and unappealable state-court order was not a state-court loser. *Green* explained that the "rationale underlying" the doctrine does not apply "if plaintiff had neither a practical reason nor a legal basis to appeal the state-court decision." *Id.*

In response, the City essentially urges this Court to limit both decisions to their facts. According to the City, these "cases only support the much narrower

proposition that a 'state-court loser' must have actually lost in state court." Resp. Br. 20. Having thus reduced the cases to a tautology, the City characterizes their holdings as narrowly as possible. In the City's view, *Lance* holds that "someone cannot be a loser in a judgment they were not a party to," while *Green* stands for the proposition that a party who is harmed by an interlocutory order but prevails at final judgment has "actually won in state court." *Id.* at 21. These distinctions, however, fail to grapple with the reasoning the courts put forward to explain their decisions—reasoning that, as noted above, focused on the fact that the plaintiffs were not in a position to appeal. The City offers no good reason for this Court to disregard the reasoning of these binding authorities.[9]

The City points to one footnote in *Lance* that it says "refutes plaintiffs' claims," Resp. Br. 21, but in fact that footnote only bolsters Plaintiffs' reading of the case. In the footnote, the Supreme Court reserved the question whether there are *any* circumstances where *Rooker-Feldman* might apply to a non-party, and as an example of a possible exception it pointed to a situation in which an estate filed "a *de facto* appeal . . . of an earlier state decision involving the decedent." 546 U.S.

[9] While not binding on this Court, the City also fails to distinguish *Hege v. Aegon USA, LLC*, 780 F. Supp. 2d 416 (D.S.C. 2011). The City would limit that case to its facts, as well, but in doing so the City disregards the opinion's holding that "where, as here, the losing party cannot directly appeal a decision, the rationale underlying [*Rooker-Feldman*] is inapposite, and applying the rule would not further its purpose." *Id.* at 423.

at 466 n.2. That caveat has no application here: It is conceivable that *Rooker-Feldman* might bar an estate from bringing a claim that the decedent could have pursued through an appeal, as the estate steps into the decedent's shoes, but in this case *no party* was in a position to appeal the state-court judgments. The only thing this footnote shows is the Supreme Court's laser-like focus on whether a case amounts to a *de facto* appeal—a focus that supports the definition of a "state-court loser" as a party who was in a position to file such an appeal.

The City also argues (without citation) that "[s]tate rules governing appeals" should not affect federal jurisdiction. Resp. Br. 23. However, both *Lance* and *Green* turned on details of state procedure: *Lance* turned on details of who was or was not a party with the right to appeal, and *Green* turned on rules governing interlocutory appeals. It makes sense that *Rooker-Feldman* requires attention to the details of state procedure, as the jurisdiction of the Supreme Court—the foundation for *Rooker-Feldman*—is itself constrained by state procedures. *See Dretke v. Haley*, 541 U.S. 386, 392 (2004) ("[A]n adequate and independent state procedural disposition strips this Court of *certiorari* jurisdiction."); *see also King v. State Edu. Dep't*, 182 F.3d 162, 163 (2d Cir. 1999) (per curiam) (*Rooker-Feldman* did not apply where state court lacked jurisdiction to address federal claim). Because Plaintiffs were not in a position to appeal a state-court judgment, they are not state-court losers, and *Rooker-Feldman* does not apply.

ii. Cases Cited By The City Are Not To The Contrary.

Against the binding decisions of the Supreme Court in *Lance* and the Second Circuit in *Green*—which ought to be dispositive for this appeal—the City cites a string of non-binding cases in support of its alternate definition of a state-court loser. *See* Resp. Br. 18-19. The City asserts that plaintiffs "all but ignore" these cases, *id.* at 13, but in fact Plaintiffs addressed most of them in the Opening Brief, and the cases Plaintiffs did not address can be distinguished.

The City cites five district court decisions that articulate a broad definition of a state-court loser, *see* Resp. Br. 18-19, but non-binding district court decisions cannot trump Supreme Court and Second Circuit cases. Moreover, even putting that to one side, all five cases would have come out the same if they had applied the proper definition of a state-court loser. For instance, while *Green v. City of New York*, 438 F. Supp. 2d at 119, deemed the plaintiffs state-court losers, the court found *Rooker-Feldman* inapplicable because the plaintiffs' injuries were not caused by the state-court judgments. Similarly, *Wittich v. Wittich*, No. 06-cv-1635, 2006 WL 3437407, *4 (E.D.N.Y. Nov. 29, 2006), found *Rooker-Feldman* inapplicable on other grounds, while *Reyes v. Fairfield Properties*, 661 F. Supp.2d 249, 274 (E.D.N.Y. 2009), *Robinson v. Cusack*, No. 05-cv-5318, 2007 WL 2028112, at *7-8 (E.D.N.Y. July 11, 2007), and *Thompson v. Donovan*, No. 13-cv-2988, 2014 WL 5149037, at *14 n.24 (S.D.N.Y. Oct. 14, 2014), found the

plaintiffs' claims separately barred by preclusion doctrine. None of these cases actually turns on the definition of a state-court loser.

The City also cites two Court of Appeals decisions in support of its proposed definition of a state-court loser, s*ee* Resp. Br. 18, but they are no more helpful for its cause. The decisions are not binding, as this Court's unpublished decision in *Fraccola*, 670 F. App'x 34, is non-precedential, while *Johnson v. Orr*, 551 F.3d 564 (7th Cir. 2008), comes from outside this Circuit. Neither decision articulates a definition of what it means to be a state-court loser. And, finally, both would come out the same under a proper definition. The plaintiff in *Fraccola* was in a position to appeal because he challenged his settlement agreement in state trial court and could have appealed from the state-court orders upholding the agreement. *See* 670 F. App'x at 35 (noting that the plaintiff "seeks to overturn the stipulation and the subsequent state court orders upholding it"). Similarly, after the *Johnson* plaintiff entered into a state-court settlement, he filed a second state-court action seeking to effectively undo the settlement, and the plaintiff could have appealed a decision in that second state-court action. *See* 551 F.3d at 566-67. Neither of these cases contradicts the definition of a state-court loser as a party who was in a position to appeal from a state-court judgment, and neither provides a reason to disregard *Lance* and *Green*.

C. Plaintiffs Are Not Seeking Review And Rejection Of A State-Court Judgment.

Finally, this case is not subject to *Rooker-Feldman* for the additional reason that Plaintiffs do not seek review and rejection of state-court judgments. *See* Op. Br. 43-47. Plaintiffs do not claim the state courts erred, and Plaintiffs do not seek to undo the judgments dismissing the state-court nuisance suits.

Plaintiffs' Opening Brief explained that Plaintiffs do not seek "review" of state-court judgments because they do not claim the state courts erred by so-ordering the settlements. *See* Op. Br. 43-44. The state courts could not have remedied the unconstitutional conditions violation by rejecting the settlements: To draw a simple analogy, if the government conditioned medical benefits on an agreement to waive constitutional rights, a court would not "remedy" the violation by taking away the plaintiff's medical benefits. By the same token, if the state courts had rejected the settlements, they would have deprived Plaintiffs of the benefit of settlement, once again placing Plaintiffs at risk of eviction, without doing anything to cure the constitutional violation.

In response, the City seeks to read the word "review" out of the phrase "review and rejection," arguing that it is irrelevant whether Plaintiffs claim the state courts erred so long as they seek to reject the state-court judgments. *See* Resp. Br. 39. However, the case the City cites does not support this proposition. The Seventh Circuit, in *Iqbal v. Patel*, 780 F.3d 728, 729 (7th Cir. 2015), held that

"*Rooker-Feldman* is concerned not with *why* a state court's judgment might be mistaken." *Id.* But it does not follow that *Rooker-Feldman* should apply where a plaintiff does not argue the state court was mistaken at all. Indeed, where a plaintiff does not assert the state court erred, the plaintiff has no "practical reason" to appeal, *Green*, 585 F.3d at 102-03, and the rationale underlying *Rooker-Feldman* does not apply.

Plaintiffs' Opening Brief also explained that Plaintiffs do not seek "rejection" of the state-court judgments, as Plaintiffs do not seek to undo the judgments dismissing the state-court nuisance suits. *See* Op. Br. 44-45. Instead, Plaintiffs seek an order barring *the City* from enforcing waivers of constitutional rights in the settlement agreements. *Id.* The Opening Brief cited several cases holding that a plaintiff does not seek "rejection" of a state-court judgment simply because the plaintiff seeks relief that might interfere with the enforcement of a state-court judgment in some respects. *Id.* at 45-46.

In response, the City once again argues that Plaintiffs' claims "are belied by their own pleadings." Resp. Br. 38. However, as discussed above in the context of causation, *supra* pp. 8-10, it is the City, not Plaintiffs, that mischaracterizes the Complaint. Just as the Complaint alleges that Plaintiffs' injuries were caused by the City, and not the state courts, the Complaint seeks relief against the City. *See* A-65-67. The Complaint seeks declaratory relief that the "settlement agreements

exacted by the City" violate the constitution, *see* A-65 ¶ D, and the Complaint seeks injunctive relief barring the City and its officers and departments from enforcing those same agreements, *see* A-66 ¶ E. The Complaint does not seek any relief against the state courts, and it certainly does not seek to reopen the state-court nuisance suits.

The City argues that an injunction against enforcing even parts of the settlement agreements would "reverse" the judgments so-ordering the agreements. *See* Resp. Br. 40. The City, however, does not cite any case adopting such a rule. Instead, the City cites cases in which plaintiffs actually sought to undo state-court judgments: The plaintiff in *Zahl v. Kosovsky*, No. 08-cv-8308, 2011 WL 779784, at *5 (S.D.N.Y. Mar. 3, 2011), sought to have a family court's custody, child support, and guardianship decisions declared "null and void"; the plaintiff in *Vossbrink v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014), sought to "void" a state-court judgment of foreclosure; and the plaintiff in *Wolf v. Town of Southampton*, No. 12-cv-5166, 2013 WL 4679672, at *4 (E.D.N.Y. Aug. 30, 2013), sought to "undo" a state-court judgment of eviction.[10] These decisions only illustrate how far this case lies from the core of *Rooker-Feldman*. Plaintiffs do not

[10] The City also cites the Eastern District of New York's decision in *Green*, 438 F. Supp. 2d 111, but, as noted *supra* p. 21, that decision ultimately held that *Rooker-Feldman* did not apply because the plaintiffs' injuries were not caused by state-court judgments.

seek to "void" or "undo" the judgments dismissing the state-court nuisance suits; to the contrary, as explained above, a decision undoing the state-court judgments would place Plaintiffs in a worse position than they occupy today.

The City also fails to distinguish cases, cited by Plaintiffs in their Opening Brief, which hold that a plaintiff does not seek to "reverse" a state-court judgment simply because the plaintiff's requested relief might interfere in some respects with the enforcement of the judgment. *See* Op. Br. 45-46. The City disregards *McCrobie v. Palisades Acquisition XVI, LLC*, 664 F. App'x 81, 83 (2d Cir. 2016), and *MSK Eyes Ltd. v. Wells Fargo Bank, N.A.*, 546 F.3d 533, 539 (8th Cir. 2008), on the ground that the enforcement conduct that the plaintiffs challenged "existed entirely separate from the state court judgments." Resp. Br. 42. But the same could be said in this case. Regardless of whether the state-court judgments remain in effect, the City can decide whether or not to enforce the challenged waivers of constitutional rights. The City's enforcement decision is "entirely separate" from the state-court judgments.

Finally, even putting aside all the foregoing, the City effectively concedes that Plaintiffs' nominal damages claims do not seek review and rejection of the state-court judgments. *See* Resp. Br. 15. The City admits that Plaintiffs "are free" to "seek damages for any injuries that they suffered" as a result of the City's conduct. *Id.* That concession alone provides a sufficient basis to reverse the

decision below, as Plaintiffs do in fact seek an award of damages in this case. *See* A-67 ¶ H. At a minimum, in light of the City's concession, the case should be sent back for further proceedings on Plaintiffs' nominal damages claims. For all the reasons discussed above, however, none of Plaintiffs' claims fall within the ambit of *Rooker-Feldman*, so the entire case should be allowed to proceed.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Dated: May 16, 2018

Respectfully submitted,

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Dated: May 16, 2018

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