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

BRIEF FOR PLAINTIFFS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1, Plaintiff-Appellant Nagle Washrite LLC, through its undersigned counsel, certifies that it has no parent company and that no publicly held corporation owns an interest of 10% or more.

/s/ Robert Everett Johnson

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INTRODUCTION

This case is a putative class action challenging the New York City Police Department's practice of using threats of eviction to force residents and business owners to waive constitutional rights. The NYPD enforces a draconian, no-fault eviction law, under which a home or business can be closed simply because a crime *occurred* on the premises—regardless of whether the occupant is at fault. As the price of settling eviction cases, the NYPD demands that Plaintiffs and other members of the putative class agree to bar family members from their homes, consent to warrantless searches, and waive the right to have future cases heard by a judge. Plaintiffs have challenged this practice under the unconstitutional conditions doctrine, which limits government's ability to condition a benefit (here, withdrawal of the threat of eviction) on waiver of a constitutional right.

The court below found this case barred by *Rooker-Feldman*, a doctrine that has been all-but eliminated by the Supreme Court. The *Rooker-Feldman* doctrine is rooted in the exclusive appellate jurisdiction of the Supreme Court; it bars federal district courts from hearing cases that are the functional equivalent of appeals from state-court judgments, on the theory that only the Supreme Court can decide such a case. While courts formerly applied *Rooker-Feldman* to broad categories of cases, the Supreme Court has more recently instructed that it must be confined to cases that truly implicate its rationale—*i.e.* cases that are the functional equivalent of

appeals from state-court judgments. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The court below erred when it applied *Rooker-Feldman* beyond these narrow confines.

This case is not a *de facto* appeal from a state-court judgment, for the simple reason that it does not involve the type of claim that would ordinarily be raised through an appeal. Plaintiffs do not assert that the state trial courts erred by so-ordering their settlements, and Plaintiffs do not seek to undo the dismissal of the underlying no-fault eviction suits. Instead, Plaintiffs assert that waivers of constitutional rights contained in their settlement agreements should be declared unenforceable. In the New York state courts, a party raising such a claim would do so by returning to trial court, not by filing an appeal from the decision so-ordering the settlement. *See infra* pp. 27, 40-41 (citing cases). It makes no sense to apply *Rooker-Feldman*—a doctrine rooted in the exclusive *appellate* jurisdiction of the Supreme Court—to a type of claim that would not be raised through an appeal.

Indeed, the Second Circuit has articulated a four-part test for application of *Rooker-Feldman*, and in this case three of the necessary requirements are not met. *See Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005). First, Plaintiffs do not claim an injury caused by a state-court judgment, as Plaintiffs challenge restrictions on their constitutional rights that were caused by the NYPD when the NYPD extracted the challenged restrictions as a condition of settlement.

Indeed, nearly a dozen cases from this and other courts confirm this conclusion, which alone is sufficient to resolve this appeal. *See infra* pp. 30-38 (citing cases). Second, Plaintiffs do not qualify as "state-court losers" for purposes of *Rooker-Feldman*. Cases from this Court and the Supreme Court point to a definition of a "state-court loser" as a person who was in a position to appeal a state-court judgment, and Plaintiffs were never in that position. Third, and finally, Plaintiffs do not seek "review and rejection" of state-court judgments, as Plaintiffs do not claim that the state courts erred by effectuating their settlements and do not seek to undo the judgments dismissing the no-fault eviction suits. Plaintiffs emphatically do not wish to reopen the underlying state-court suits, and indeed an order reopening those proceedings would not remedy the constitutional violation at issue. Instead, Plaintiffs seek limited relief barring the NYPD from enforcing waivers of constitutional rights.

Ultimately, the decision below grants state-court judgments greater preclusive effect in federal court than in state court, while denying federal courts jurisdiction to hear an entire class of federal constitutional claims. This is precisely the outcome the Supreme Court warned of in *Exxon Mobil*, when the Court stated that *Rooker-Feldman* should not be allowed to "supplant preclusion doctrine" or override "Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts." 544 U.S. at 283-84. New York state courts

allow a party to a settlement to challenge the agreement as the product of unlawful coercion. Yet the court below held that federal courts must decline to entertain precisely that type of suit, notwithstanding their "virtually unflagging obligation . . . to exercise the jurisdiction given them." *In re Joint E. and S. Dist. Asbestos Litig.*, 78 F.3d 764, 775 (2d Cir. 1996). Following *Exxon Mobil*, this Court should reject that result. The judgment below should be reversed.

ISSUE PRESENTED FOR REVIEW

Did the trial court err when it applied *Rooker-Feldman* to bar Plaintiffs' constitutional challenge to New York City's practice of using threats of eviction to compel residents and business owners to waive constitutional rights?

STATEMENT OF THE CASE

Plaintiffs Sung Cho, David Diaz, and Jameelah El-Shabazz (along with Sung Cho's business, Nagle Washrite LLC) filed this putative class action in the United States District Court for the Southern District of New York on October 12, 2016. J.A. 15.[1] Defendants are the City of New York, the New York City Police Department, and the New York City Law Department, as well as the New York City Mayor, Police Commissioner, and Corporation Counsel. J.A. 5-7. Plaintiffs claim that Defendants violated the unconstitutional conditions doctrine by conditioning settlement of no-fault eviction cases on waivers of constitutional

[1] Citations to "J.A." refer to the Joint Appendix. Citations to "D.E." refer to docket entries in the court below.

rights, and Plaintiffs seek injunctive relief that would bar Defendants from enforcing the challenged waivers. J.A. 54-63, 66-67. Plaintiffs also seek declaratory relief and an award of nominal damages. J.A. 65, 67.

On December 9, 2016, Defendants filed a letter seeking leave to file a motion to dismiss based on standing, mootness, waiver, time bar, and failure to state a claim. D.E. 35. The District Court held a pre-motion conference on February 22, 2017, and Defendants filed their Motion to Dismiss on April 3, 2017. D.E. 41, 45. Defendants did not raise *Rooker-Feldman*. *See* D.E. 46. Finally, the District Court held a hearing on Defendants' Motion to Dismiss on August 1, 2017, at which counsel for Defendants conceded that *Rooker-Feldman* does not apply. D.E. 64 at 66 ("*Rooker-Feldman*, under its new construct, wouldn't apply . . . . I wouldn't argue *Rooker-Feldman* here.").

On August 7, 2017, the District Court directed the parties to submit supplemental briefs on the *Rooker-Feldman* issue. J.A. 257-58. Then, on January 12, 2018, the District Court issued its decision dismissing the case on *Rooker-Feldman* grounds. J.A. 259. The District Court entered its Judgment on January 17, 2018, and Plaintiffs filed their Notice of Appeal on February 5, 2018. J.A. 271, 272.

STATEMENT OF THE FACTS

A. The NYPD Uses A Draconian No-Fault Eviction Law To Force Residents And Business Owners To Waive Constitutional Rights.

New York City's Nuisance Abatement Law allows the City to close a residence or business for up to one year when it can show—by a preponderance of the evidence—that an enumerated criminal offense occurred on the premises. N.Y.C. Admin. Code § 7-701 *et seq*. Enumerated offenses include, among other things, drug crimes, stolen property offenses, prostitution, obscenity, and liquor law violations. *Id.* § 7-703.

At the time of the events in question, the ordinance allowed the City to initiate an action by obtaining an order closing off the premises in an *ex parte* proceeding, without any prior notice or opportunity to be heard. N.Y.C. Admin. Code § 7-710 (2016). After eviction, an individual would then have just three days to prepare for a hearing at which the court would decide whether the premises should remain closed for the duration of the litigation. *Id.*

In addition, at the time of the events in question, the ordinance allowed the City to evict residents and business owners simply because an offense *occurred* at their home or business, regardless of whether they were in any way at fault. *See, e.g.*, *City of New York v. Partnership 91, L.P.*, 277 A.D.2d 164, 164-65 (N.Y. App. Div. 2000); *City of New York v. Castro*, 160 A.D.2d 651, 652 (N.Y. App. Div.

1990). People were evicted based on offenses committed by friends, relatives, or even total strangers.

The City's draconian ordinance enabled even more draconian policies and practices. For years, NYPD lawyers churned out eviction cases using template documents, without meaningful investigation into the facts. J.A. 22 ¶ 31. An attorney who worked filing these actions told a reporter: "Everything is kind of like, you know boilerplate, like fill in the blanks or whatever. . . . Like we get the vouchers, we just plug in the time, the date. Like there's a lot of mistakes in these [nuisance abatement] orders, you know? Like a lot of them are just a mess." *Id.*

Additionally, the City sought *ex parte* closing orders using affidavits from NYPD officers describing alleged conduct by individuals identified only as "John Doe" or "Jane Doe." J.A. 23 ¶ 32. These affidavits relied on statements by unnamed confidential informants, meaning both the accuser and the accused remained anonymous. *Id.* The City also commenced these actions many months after the underlying offense allegedly occurred. J.A. 23 ¶ 33.

With no defense based on innocence, the ordinance frequently ensnared people who had done nothing wrong. Data gathered by *ProPublica* and the *New York Daily News*, encompassing 516 cases filed against residences under the City's no-fault eviction ordinance between January 1, 2013 and June 30, 2014, reveals

173 people who were not convicted of a crime and yet nevertheless were forced out of homes during that period. J.A. 22 ¶ 28.

The City also had a policy and practice of settling these eviction actions on the condition that residents and business owners agree to waive constitutional rights. J.A. 23-24 ¶¶ 35-37. To regain entry to their home or business—and to avoid the threat of protracted litigation in which innocence would not be a defense—individuals were compelled to waive their rights to live with family members, to be free from warrantless searches, and to have a hearing before a judge before imposition of future fines and other sanctions. *Id.* ¶ 36.

In February 2016, Fern A. Fisher, Deputy Chief Administrative Judge for the New York City Courts, issued an Advisory Notice raising concerns about the City's application of its no-fault eviction ordinance. Judge Fisher noted that "occupants . . . do not have notice that their dwelling place is being closed"; supporting "affidavits are very general and do not reference an individual defendant"; "[m]any cases are commenced against Jane Doe, so there are virtually no claims in the affidavit of merit against individuals"; and "very few cases involve any direct criminal allegations against the named defendants." J.A. 24 ¶ 38. Judge Fisher also stated: "On the rare occasions when a defendant appears on

the hearing date, virtually every time there is a stipulation of settlement where the defendants waive all of their rights." *Id.*[2]

B. Plaintiffs Waive Their Rights Under Threat Of Eviction.

The Plaintiffs and putative class members in this litigation are victims of the policies and practices described above.[3] All are subject to agreements waiving their constitutional rights.

1. Sung Cho: Forced To Waive His Rights After NYPD Officers Sold Stolen Electronics To Members Of The Public At His Laundromat.

Sung Cho is the proprietor of Super Laundromat & Dry Cleaners, a large facility with rows of spotless, stainless-steel washers and driers. J.A. 24 ¶ 39. The business is formally organized as Nagle Washrite LLC, with Sung as the sole

[2] Subsequent to the filing of this case, the City amended its ordinance to curtail these practices. The ordinance now provides a defense based on innocence, N.Y.C. Admin. Code §§ 7-725, 7-726, requires that conditions included in settlements be tailored to the alleged underlying offense, *id.* § 7-724, and states that agreements to exclude an individual from a home must be limited to one year or (in exceptional cases) three years, *id.* § 7-723. In addition, the ordinance now limits the use of *ex parte* closing orders to prostitution offenses and to dangerous or uninhabitable buildings. *Id.* § 7-709(a). These changes will help to prevent abuse in the future but do nothing for New Yorkers (like Plaintiffs) already compelled to waive their rights. Those New Yorkers are limited in the exercise of their constitutional rights today and will continue to be so in the future.

[3] Plaintiffs were previously the subject of a series of Pulitzer Prize-winning news articles describing the events at issue. *See* Sarah Ryley, *The NYPD Is Kicking People Out Of Their Homes, Even If They Haven't Committed a Crime*, N.Y. Daily News and ProPublica (Feb. 4, 2016), http://bit.ly/1UQtSto; Sarah Ryley, *The NYPD Is Running Stings Against Immigrant-Owned Shops, Then Pushing For Warrantless Searches*, N.Y. Daily News and ProPublica (Apr. 22, 2016), http://bit.ly/1pyw1zy.

member of the LLC. *Id.* Sung came to the country at age 14 and, after working other jobs, decided to go into business for himself. J.A. 25 ¶ 40. Sung opened the laundromat in 2008 in Inwood, a neighborhood in Manhattan. *Id.*

On two separate occasions, the NYPD conducted sting operations at the laundromat during which undercover officers offered to sell stolen electronics to members of the public. J.A. 25 ¶ 41. On January 24, 2013, an officer allegedly sold a stolen iPad Mini for $100, and on May 17, 2013, an officer allegedly sold a stolen iPhone, iPad Mini, and iPad for $200. *Id.* ¶¶ 42-43. Neither of these incidents involved any wrongdoing by Sung or his employees. *Id.* ¶ 41. At the time, the NYPD did not inform Sung of the incidents and did not ask Sung to take any steps to stop such things from happening in the future. *Id.* ¶ 44.

Seven months after the second of these undercover sting operations, on December 17, 2013, Sung arrived at his business and found a notice posted on the door informing him that the NYPD had filed an action under the City's no-fault eviction ordinance seeking to close the premises. J.A. 25 ¶ 46. The notice scheduled a preliminary injunction hearing for December 24, 2013, or Christmas Eve, giving Sung just one week to put together a case to show cause why his business should not be closed for the duration of the litigation. J.A. 26 ¶ 47.

With the looming risk that the laundromat would be ordered closed at the Christmas Eve hearing, Sung agreed to enter into a settlement. J.A. 26 ¶ 49. If

Sung had instead attempted to defend the case, the fact that he and his employees had no involvement in the alleged offenses would not have provided a defense. *Id.* ¶ 48. Faced with the threat of protracted litigation under a law that did not include any defense based on innocence, Sung felt he had no real choice but to agree to the NYPD's settlement terms. *Id.* ¶ 50.

Under the settlement agreement, Sung must allow warrantless searches of the laundromat (for *any* criminal activity, not just stolen property crimes) and provide the NYPD with unfettered access to the business's surveillance cameras. J.A. 26 ¶ 52. In addition, in the event the NYPD accuses Sung or his "customers, employees, and/or representatives" of any future offense listed in the City's Nuisance Abatement Law, the agreement allows the NYPD to close the laundromat without a prior hearing before a court. J.A. 27 ¶ 53. Finally, the agreement binds not just Sung but also future owners of the laundromat, as it must be made part of any sale of the business. *Id.* ¶ 55.

2. David Diaz: Forced To Exclude His Family From His Home, To Avoid Eviction From The Apartment Where He Was Born.

David Diaz is a resident of the Bronx who works as a custodian at a synagogue. J.A. 18 ¶ 13. He lives with his young daughter and his sister in an apartment near the Bronx Zoo. *Id.* David was born in the apartment and has lived there his entire life. J.A. 28 ¶ 58. He took over the lease from his mother when she passed away. *Id.* ¶ 59.

The NYPD raided David's apartment on May 9, 2013, while David's extended family was visiting for a memorial dinner honoring his mother. J.A. 28 ¶ 61. Armed officers busted in the front door, ripped David's mattress, and put holes in the walls. *Id.* Officers claim to have found a small amount of contraband during the raid—two rocks of cocaine, as well as a scale, straw, three razor blades, and plastic bags. J.A. 29 ¶ 62. David was not aware of any of this material being in the apartment, and he would not have allowed it to remain if he had known. *Id.* ¶ 63. David does not know who in his family (if anyone) possessed this contraband. *Id.* Police arrested David, his two brothers, his sister, and two of his nephews following the raid, but after two days they released everyone without pursuing charges. *Id.* ¶ 64.

Approximately five months later, on September 4, 2013, David received a call at work from his sister informing him that the NYPD was at his apartment threatening his family with eviction. J.A. 30 ¶ 69. David spoke to an NYPD attorney over the phone, and the attorney told David the City had obtained an *ex parte* order closing the apartment. J.A. 29-30 ¶¶ 67, 70. David had no prior notice that the City was seeking to close the apartment, and he had no opportunity to be heard before the apartment was ordered closed. J.A. 29 ¶ 68.

The City obtained this *ex parte* closing order on the basis of an affidavit from an NYPD officer who described the May 9 raid and also claimed that an

unnamed confidential informant had purchased drugs from an unnamed individual in April and May 2013. J.A. 29 ¶ 67.

While the City had a court order closing David's apartment, the NYPD attorney told David the City would nevertheless allow the family to remain in the apartment temporarily to avoid throwing David's infant daughter onto the street. J.A. 30 ¶ 70. The NYPD attorney, however, told David he would have to enter a more permanent agreement to avoid eviction. *Id.*

Two days later, on September 6, 2013, David appeared for a scheduled preliminary injunction hearing in the case, at which he was approached by another NYPD attorney. J.A. 30 ¶¶ 71, 73. David wrongly assumed that this lawyer had been appointed by the court to represent his interests. *Id.* ¶ 73. The lawyer advised David that it would be risky to fight the eviction action, as he and his infant daughter could end up homeless, and advised David to sign a settlement. *Id.* Unable to afford to fight, and worried that he and his daughter could be evicted, David felt he had no real choice other than to agree to the NYPD's terms. *Id.* ¶ 74.

David signed an agreement under which he must exclude several of his family members—including his two brothers—from his apartment. J.A. 30 ¶ 74; J.A. 34-35 ¶ 98. The agreement bars these family members from the apartment forever, at all times, regardless of their reason for visiting. J.A. 31 ¶ 76. That agreement poses significant difficulties for David, who relies on his brothers to

babysit his daughter while he is at work. *Id.* In addition, one of David's brothers is currently homeless, and David would invite his brother to live at the apartment if doing so was not barred by the agreement. *Id.* ¶ 77.

3. Jameelah El-Shabazz: Forced To Exclude Her Son From Her Home, After Police Found Crushed Eggshells In The Apartment.

Jameelah El-Shabazz is a resident of the Bronx who works in the maintenance department of an Equinox gym. J.A. 31 ¶ 78. She has three sons, a daughter, and an infant child. *Id.*

The NYPD raided Jameelah's apartment—as well as several neighboring apartments—in May 2011. J.A. 31 ¶ 79. The police entered with guns drawn, destroyed Jameelah's mattress, emptied dressers and drawers, and knocked furniture to the floor. *Id.* In the apartment, police found numerous paper cups filled with powdered eggshells, which Jameelah, a practitioner of a traditional African faith called Ifá, uses for religious ceremonies. J.A. 32 ¶ 80. Believing the powdered eggshells to be illegal drugs, police arrested Jameelah and her son Akin. *Id.* ¶ 81. The NYPD held Jameelah and Akin in jail for a week, until laboratory tests revealed the innocuous nature of the crushed eggshells. *Id.* Jameelah subsequently sued for wrongful arrest and imprisonment, and the City settled those claims in August 2011, paying Akin $25,000 and Jameelah $12,500. *Id.* ¶ 82.

On September 27, 2011, over four months after the raid and one month after the City settled the wrongful-arrest cases, Jameelah returned home from work to

find a notice on the door informing her that the apartment had been ordered closed in an *ex parte* proceeding. J.A. 32 ¶¶ 83, 85-86. Jameelah had no prior notice and no opportunity to be heard. *Id.* ¶ 85.

The City obtained this *ex parte* closing order on the basis of an affidavit from an NYPD officer who described the May 2011 raid and also claimed that an unnamed confidential informant purchased drugs from an unnamed individual at the apartment. J.A. 32 ¶ 84. The affidavit claimed that police found "paper cups of cocaine" at the residence during the May 2011 raid, despite the fact that lab tests had already shown that the cups did not contain illegal drugs. *Id.*

Jameelah was able to obtain the assistance of a legal aid attorney, and the attorney signed a settlement on Jameelah's behalf to lift the closing order. J.A. 33 ¶¶ 87, 90. Jameelah was not aware of the contents of this agreement until much later, when a reporter discovered it and brought it to her attention. *Id.* ¶ 92. The agreement provides that Jameelah must permanently exclude her son Akin from her apartment. *Id.* ¶ 89; J.A. 35 ¶ 101. Under the agreement, Jameelah must exclude her son from her apartment forever, no matter the reason for the visit. J.A. 35 ¶¶ 101-02.

4. Putative Class Members Suffered Similar Injuries.

These cases are hardly unique. To the contrary, large numbers of New Yorkers were targeted by the NYPD's no-fault eviction machine and compelled to

enter into settlement agreements in which they waived their constitutional rights. J.A. 23-24 ¶ 36. In the period between January 1, 2013 and June 30, 2014 alone, there were at least 74 cases in which people consented to warrantless searches of their homes, 333 cases in which businesses consented to warrantless searches, 102 cases in which businesses agreed to install and provide access to security cameras, 101 cases in which businesses in Manhattan agreed to imposition of future fines and penalties without judicial intervention, and 118 cases in which people agreed to exclude certain individuals from their homes. *Id.*

C. The District Court Dismisses On *Rooker-Feldman* Grounds.

Plaintiffs filed suit on October 12, 2016, raising a number of individual and class-wide claims under the unconstitutional conditions doctrine. J.A. 54-63 ¶¶ 170-229. This doctrine applies when government threatens to "withhold [a] benefit," or to refuse some other kind of discretionary action, "because someone refuses to give up constitutional rights." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013). Courts hold that an agreement to settle a lawsuit can count as a "benefit" for purposes of the unconstitutional conditions doctrine, 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); *see also Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 707 (E.D. Pa. 2015); *Louisiana Pacific Corp. v.*

Beazer Materials & Servs., Inc., 842 F. Supp. 1243, 1251 (E.D. Cal. 1994). Plaintiffs therefore claimed that the City violated the unconstitutional conditions doctrine when it conditioned settlement of no-fault eviction cases on agreements to waive constitutional rights.

As a remedy for these violations, the Complaint seeks injunctive relief barring the City from enforcing waivers of constitutional rights contained in settlement agreements. J.A. 66 ¶ E. Among other things, Plaintiffs seek to bar the City from enforcing waivers of the right to be free from warrantless searches, *id.* ¶ E(iii), the right to a judicial hearing prior to the imposition of future penalties, J.A. 67 ¶ E(iv), and the right to associate with family members in the home, *id.* ¶ E(v), where such waivers were obtained from individuals who had not been convicted of the criminal offense underlying the no-fault eviction case. In addition, Plaintiffs seek a declaration that these provisions violate the constitution, J.A. 65-66 ¶ D, as well as an award of nominal damages, J.A. 67 ¶ H.

The City did not raise *Rooker-Feldman* as an issue, and when the District Court asked the City's attorney about *Rooker-Feldman* at a hearing the attorney conceded that *Rooker-Feldman* does not apply. D.E. 64 at 66. Nonetheless, the District Court raised the issue *sua sponte* and directed the parties to submit briefs on the issue. J.A. 257-58. Then, on January 12, 2018, the District Court issued a decision dismissing the case on *Rooker-Feldman* grounds. J.A. 259.

First, the District Court concluded that Plaintiffs qualify as "state-court losers" under *Rooker-Feldman* because they "were all defendants in the original nuisance abatement lawsuits brought against them, which were resolved by settlements." J.A. 266. The District Court indicated that it would not attempt to evaluate whether a particular settlement "should be considered a loss," and instead deemed it sufficient that Plaintiffs "allege that the court-approved settlements somehow violated their rights." *Id.* (internal quotation marks omitted).

Next, the District Court concluded that Plaintiffs' injuries were caused by state-court judgments, as "the source of [Plaintiffs'] injury is the settlement agreements, so-ordered by the Justices of the New York State Supreme Court." J.A. 268-69. The District Court rejected the argument that Plaintiffs' injuries were caused by the City's conduct negotiating the agreements, rather than the ratification of the agreements by the state courts, as "the City's conduct, or alleged unconstitutional coercion, would have produced no injury" if the state courts had not so-ordered the agreements. J.A. 267.

Finally, the District Court concluded that Plaintiffs were seeking review and rejection of state court judgments because Plaintiffs "undoubtedly seek review and rejection of the Stipulations of Settlement." J.A. 269. The District Court did not address the fact that Plaintiffs do not seek to undo the dismissal of the underlying

no-fault eviction actions, and instead seek only to bar the City from enforcing the waivers of constitutional rights contained in the settlements. *Id.*

The District Court also rejected Plaintiffs' argument that *Rooker-Feldman* should not apply because "this proceeding is not the functional equivalent of a state court appeal." J.A. 269. While acknowledging that "Plaintiff would have to return to the trial court to challenge the settlement in the state trial courts rather than appeal from the judgment entering the settlement," the District Court rejected a "narrow definition of 'de facto appellate review.'" *Id.* Rather, the District Court concluded, any "'proceeding to review or modify' a judgment is 'an exercise of appellate jurisdiction.'" *Id.*

SUMMARY OF THE ARGUMENT

I. The District Court erred by holding this case barred by *Rooker-Feldman*, as the Supreme Court has held that the doctrine must be "confined" to a narrow class of cases. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *see also Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam). Under *Exxon Mobil*, the doctrine is limited to cases that are the functional equivalent of appeals from state-court judgments; after all, the doctrine seeks to preserve the exclusive appellate jurisdiction of the Supreme Court, so it makes no sense to apply the doctrine to claims that would not be raised on appeal. Here, *Rooker-*

Feldman does not apply for the simple reason that this case involves claims that would ordinarily be raised in the first instance in the trial courts.

II. This high-level conclusion is confirmed by the four-part test that the Second Circuit has developed for *Rooker-Feldman* cases. *See Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005). Three of the four necessary requirements for application of *Rooker-Feldman* are absent in this case.

A. First, *Rooker-Feldman* does not apply because Plaintiffs do not complain of an injury caused by a state-court judgment. Plaintiffs' ongoing injuries—*i.e.* their exclusion of family members from their homes, their inability to prevent warrantless searches, and their exposure to future sanctions without a court hearing—were caused by the NYPD's demand that they waive their constitutional rights as a condition of settlement. To be sure, the state courts also so-ordered the settlements, but this Court has held that a plaintiff's injury is not caused by a state-court judgment where it is "simply ratified, acquiesced in, or left unpunished by" the state court. *Hoblock*, 422 F.3d at 88. That is precisely the case here.

For this reason, multiple courts have held that challenges to state-court settlements are not barred by *Rooker-Feldman*. *See Arnett v. Arnett*, No. 13-cv-1121, 2014 WL 2573291 (D. Utah June 9, 2014); *Green v. City of New York*, 438 F. Supp. 2d 111 (E.D.N.Y. 2006); *In re Chinin USA, Inc.*, 327 B.R. 325 (N.D. Ill. 2005); *Capela v. J.G. Wentworth, LLC*, No. 09-cv-882, 2009 WL 3128003

(E.D.N.Y. Sept. 24, 2009). Plaintiffs' ongoing injuries were caused by the City's settlement demands, not by the state courts that ratified the settlements.

The District Court's contrary holding rested on its conclusion that Plaintiffs would not have been injured by the settlements if the state courts had not so-ordered them. That is factually untrue: Two of the agreements became effective as soon as they were signed by the parties, even before they were ratified by the state courts. It is also legally irrelevant: On that theory, *Rooker-Feldman* would apply on the facts of *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70 (2d Cir. 2015), as the plaintiffs in that case were only harmed by the challenged "default judgment mill" because it succeeded in obtaining state-court default judgments. Instead, this Court held that *Rooker-Feldman* did not apply because the plaintiffs' claims "speak not to the propriety of the state court judgments, but to the fraudulent course of conduct that defendants pursued in obtaining such judgments." *Id.* at 94-95. The same is true here. Plaintiffs' claims speak not to the propriety of the state court judgments ratifying the settlement agreements, but to Defendants' course of conduct extracting those settlement terms. Nearly a dozen decisions from this and other courts—cited *infra* pp. 30-38—are in accord.

B. Second, *Rooker-Feldman* does not apply because Plaintiffs are not "state-court losers" within the meaning of that doctrine. Both the Supreme Court and the Second Circuit have held that *Rooker-Feldman* does not apply to a party who was

never in a position to appeal from a state-court judgment. *See Lance*, 546 U.S. at 465; *Green v. Mattingly*, 585 F.3d 97, 102-03 (2d Cir. 2009). After all, the "rationale underlying" the *Rooker-Feldman* doctrine does not apply "if plaintiff had neither a practical reason nor a legal basis to appeal the state-court decision that caused her alleged injuries." *Green*, 585 F.3d at 102-03. That is precisely the case here. If Plaintiffs had attempted to raise these claims by appealing the state-court judgments so-ordering their settlements, their appeals would have been dismissed.

C. Third, *Rooker-Feldman* does not apply because Plaintiffs do not ask for "review and rejection" of the state court judgments. First, Plaintiffs do not ask for "review" of the judgments approving the settlements, as Plaintiffs do not claim that the state courts erred by so-ordering the settlements. Second, Plaintiffs do not seek "rejection" of the judgments approving the settlements, as Plaintiffs do not wish to undo the state-court judgments dismissing the nuisance suits. Indeed, an order undoing the settlements—once again placing Plaintiffs at risk of eviction—would not remedy the violations at issue. Plaintiffs' more limited challenge to enforcement of particular provisions of the agreements is "not the same as questioning whether the state court's original . . . judgment has continuing legal validity." *McCrobie v. Palisades Acquisition XVI, LLC*, 664 F. App'x 81, 83 (2d Cir. 2016) (summary order).

D. Against all this, the District Court cited a small number of cases applying *Rooker-Feldman* to litigants who previously entered state-court settlements. These cases, however, are readily distinguished. They involve plaintiffs who claimed to have been injured by erroneous state-court decisions; who at one point were in a position to appeal from the decisions; and who sought an order that would actually undo the state-court judgments. In short, unlike the Plaintiffs here, those plaintiffs sought to pursue claims that amount to *de facto* appeals.

III. Finally, the District Court's broad application of *Rooker-Feldman* will have precisely the effect that the Supreme Court warned against in *Exxon Mobil*. The court below essentially held that challenges to the enforcement of state-court settlement agreements can only be brought in state court. That ruling would "supplant preclusion doctrine," *Exxon Mobil*, 544 U.S. at 284, by granting decisions so-ordering state-court settlements greater preclusive effect in federal court than in the state courts, although state-court judgments ordinarily have the *same* preclusive effect in state and federal court. And it would override "Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts," *id.* at 283, by creating a class of federal constitutional claims that can only be pursued in state court. That result should not be allowed to stand. Plaintiffs should be allowed to pursue their federal claims in a federal court.

STANDARD OF REVIEW

Whether the District Court erred by dismissing under *Rooker-Feldman* is a legal issue that this Court reviews *de novo*. *See, e.g.*, *Green v. Mattingly*, 585 F.3d 97, 101 (2d Cir. 2009).

ARGUMENT

I. This Case Does Not Fall Within The Narrow Rule Articulated By The Supreme Court In *Rooker* And *Feldman*.

The Supreme Court significantly limited the *Rooker-Feldman* doctrine in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), stating that the doctrine had been applied far too broadly. The Court held that the doctrine should be "confined to cases of the kind from which the doctrine acquired its name." *Id.* at 284. In other words, the doctrine is confined to cases "where a party in effect seeks to take an appeal of an unfavorable state-court decision." *Lance v. Dennis*, 546 U.S. 459, 466 (2006). The decision below should be reversed for the simple and straightforward reason that this is not that type of case.

Both *Rooker* and *Feldman* involved federal-court plaintiffs who, rather than appeal an adverse state-court decision, sought to challenge the decision in federal district court. *See Exxon Mobil*, 544 U.S. at 284-85. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), a federal-court plaintiff sued to have a state-court decision declared "null and void" on the ground that it enforced an unconstitutional statute. *Id.* at 414. The Supreme Court found that this claim fell within its exclusive

appellate jurisdiction, as "no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character." *Id.* at 416. Thus, a federal district court did not have power to decide it. *Id.* Meanwhile, in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the federal-court plaintiff sued the highest appellate court for the District of Columbia (the equivalent of a state high court) claiming that the D.C. high court improperly rejected an earlier challenge to the constitutionality of a court rule. *Id.* at 464. The Supreme Court again found that this claim fell within its exclusive appellate jurisdiction, as it "required the District Court to review a final [state court] judicial decision." *Id.* at 486. Both cases invited the functional equivalent of appellate review.

Following these decisions, this Court has applied the *Rooker-Feldman* doctrine to cases that seek *de facto* appellate review of state-court decisions. Some cases involve suits filed against state-court judges, asserting that they violated the law by issuing a judgment. *See, e.g.*, *Richter v. Conn. Judicial Branch*, 600 F. App'x 804, 805 (2d Cir. 2015) (summary order) (plaintiff sued state-court judges for violating federal disabilities law in course of state-court proceedings).[4] Other

[4] *See also Jordan v. Levine*, 536 F. App'x 158, 159 (2d Cir. 2013) (summary order) (plaintiff sued state-court judges for engaging in misconduct in the course of state-court eviction proceedings); *Daigneault v. Judicial Branch*, 309 F. App'x 518, 519 (2d Cir. 2009) (summary order) (plaintiff sued state-court judges for dismissing state discrimination suit); *Koziel v. City Court of Yonkers*, 351 F. App'x

cases, while not brought directly against state-court judges, nonetheless assert error by state-court judges in state-court proceedings. *See, e.g.*, *Vossbrink v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014) (per curiam) (plaintiff's challenge to state-court foreclosure order asked the "federal court to review the state proceedings and determine that the foreclosure judgment was issued in error").[5] These types of cases are barred by *Rooker-Feldman* because they involve *de facto* appeals from state-court decisions.

470, 471 (2d Cir. 2009) (summary order) (plaintiff sued state-court judges for decision in parking-violation case).

[5] The most common application of *Rooker-Feldman* in this Court involves plaintiffs who, like the plaintiffs in *Vossbrinck*, allege that the state courts erred by issuing a foreclosure judgment. *See, e.g.*, *Worthy-Pugh v. Deutsche Bank Nat'l Trust Co.*, 664 F. App'x 20, 21 (2d Cir. 2016) (summary order); *Wik v. City of Rochester*, 632 F. App'x 661, 662 (2d Cir. 2015) (summary order); *Russo v. DiLieto*, 566 F. App'x 85, 86 (2d Cir. 2014) (summary order); *Swiatkowski v. Citibank*, 446 F. App'x 360, 361 (2d Cir. 2011) (summary order); *Ashby v. Polinsky*, 328 F. App'x 20, 21 (2d Cir. 2009) (summary order).

Other cases applying the *Rooker-Feldman* doctrine, while not involving the foreclosure context, likewise challenge state-court judgments as legal error. *See Adams v. Vermont Office of Child Support*, __ F. App'x __, 2017 WL 6508671 (2d Cir. Dec. 20, 2017) (summary order) (plaintiff challenged state-court child support order on grounds that it was issued without jurisdiction); *Morris v. Rosen*, 577 F. App'x 41, 43 (2d Cir. 2014) (summary order) (plaintiff raised same due process challenge previously rejected by state court); *Canning v. Admin. for Children's Services*, 588 F. App'x 48, 49 (2d Cir. 2014) (summary order) (plaintiff claimed that state-court custody decision "was obtained without meeting the sufficient burden of proof"); *Jaeger v. Cellco P'ship*, 542 F. App'x 78, 80 (2d Cir. 2013) (summary order) (plaintiff challenged "dismissal of her . . . state-court appeal as a violation of her due process and equal protection rights"); *Stengel v. Black*, 368 F. App'x 164, 166 (2d Cir. 2010) (summary order) (plaintiff asserted that Ohio state court judgment "was erroneous").

Rooker-Feldman does not apply here, as the claims in this case are not the functional equivalent of an appeal. A party to a settlement agreement that includes allegedly invalid terms does not challenge those provisions by appealing from the judgment effectuating the settlement; instead, the party returns to trial court. *See, e.g.*, *Libert v. Libert*, 78 A.D.3d 790, 790-91 (N.Y. App. Div. 2010) (successful suit to set aside provision of settlement agreement as unconscionable, commenced by filing action in trial court); *Santini v. Robinson*, 68 A.D.3d 745, 750 (N.Y. App. Div. 2009) (same). The City acknowledged as much below, as it argued that Plaintiffs have an available state-court remedy because they could "bring an action in *the same court* that initially so ordered" the settlements—meaning the state trial courts. D.E. 46 at 24 (emphasis added). This alone should dispose of the inquiry: Plaintiffs seek to pursue a type of claim that would ordinarily be pursued in the trial courts, and that therefore is *not* the functional equivalent of an appeal.

The District Court rejected this straightforward conclusion, stating that "the Supreme Court [has] made clear that *Rooker-Feldman* does not turn on whether the proceeding is a true analogue of an appeal." J.A. 269 (citing *Exxon Mobil*, 544 U.S. at 284). But that could not be further from the truth: The Supreme Court has held that "[t]he doctrine applies only in 'limited circumstances' where a party *in effect seeks to take an appeal* from an unfavorable state-court decision." *Lance*, 546 U.S. at 466 (emphasis added and citation omitted). The District Court cited

Exxon Mobil for the contrary proposition, but in fact *Exxon Mobil* held that the *Rooker-Feldman* doctrine must be narrowly confined to cases that fall within the exclusive appellate jurisdiction of the Supreme Court. *See Exxon Mobil*, 544 U.S. at 283-84. Given that the entire point of *Rooker-Feldman* is to preserve the Supreme Court's exclusive appellate jurisdiction, it makes no sense to apply the doctrine to a type of claim that would not be raised on appeal.

II. This Case Does Not Meet The Test Articulated By The Second Circuit For Application Of The *Rooker-Feldman* Doctrine.

Following *Exxon Mobil*, the Second Circuit has articulated a four-part test for application of *Rooker-Feldman*. Specifically, *Rooker-Feldman* only applies if (1) the federal-court plaintiff lost in state court; (2) the plaintiff complains of injuries caused by a state-court judgment; (3) the plaintiff invites review and rejection of that state-court judgment; and (4) the state-court judgment was rendered before the federal suit was filed. *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005) (citing *Exxon Mobil*, 544 U.S. at 284). The decision below should be reversed for the additional reason that the first three requirements do not apply to the Plaintiffs here.

A. Plaintiffs Do Not Complain Of An Injury Caused By A State Court Judgment.

In *Hoblock*, this Court stated that the "key" question for application of *Rooker-Feldman* is whether plaintiffs complain of an injury caused by a state-court

judgment. 422 F.3d at 87-88. Here, Plaintiffs do *not* complain of injuries caused by a state-court judgment, as Plaintiffs complain of restrictions on their constitutional rights that were caused when the City required that they agree to those restrictions as a condition of settlement. The District Court's contrary theory—that Plaintiffs' injuries were caused by the state courts because the settlements did not take effect until ratified by the state courts—is factually incorrect and legally flawed. Two of the agreements became effective as soon as they were signed by the parties, and in any event, the state court judgments ratifying the settlements were an *effect* of the City's challenged conduct and not its cause. It was the City—not the state courts—that coerced Plaintiffs to waive their constitutional rights.

1. Plaintiffs Challenge Settlements That Were Extracted By The City And Merely Ratified By The State Courts.

In a passage that is dispositive for this appeal, this Court in *Hoblock* explained that a plaintiff's injury is *not* caused by a state-court judgment where it is "simply ratified, acquiesced in, or left unpunished by" the state court. 422 F.3d at 88. This is precisely such a case: The waivers of constitutional rights that Plaintiffs seek to challenge were extracted by the City in the course of settlement negotiations and were, at most, ratified by the state courts when the state courts so-ordered those agreements. Indeed, as explained below, numerous courts have applied precisely this reasoning to hold that *Rooker-Feldman* does not bar a challenge to a state-court settlement agreement.

Plaintiffs' Complaint is clear that the challenged waivers were extracted by the City, not the state courts. The very first paragraph of the Complaint states that this "is a case about a lumbering and indiscriminate *law enforcement program* that forces ordinary, innocent people to waive their constitutional rights." J.A. 15 ¶ 1 (emphasis added). Plaintiffs allege that "[n]o-fault eviction actions rarely proceed all the way to a final decision by a judge." J.A. 23 ¶ 35. Indeed, "City officials do not seek to litigate these eviction actions to a final decision," and instead "file these actions in order to pressure property owners and leaseholders to enter into settlement agreements waiving constitutional rights." J.A. 36 ¶ 109; *see also* J.A. 37 ¶ 110 ("City officials inform property owners and leaseholders that they must agree to waive their constitutional rights as a condition of settlement."). The Complaint could not be clearer that these waivers of constitutional rights are extracted by the City as a condition of settlement. They are, at most, ratified by the state courts when the state courts so-order the agreements.

This case is closely akin to *Green v. City of New York*, 438 F. Supp. 2d 111 (E.D.N.Y. 2006), which refused to apply *Rooker-Feldman* to a challenge to a provision of a state-court settlement. In that case, disabled children and their parents claimed that settlement agreements obtained in state-court personal injury actions violated federal law because they included deductions to recoup the cost of services that federal law mandates be provided free of charge. *Id.* at 117. Those

settlements were approved by the state courts, and a judgment for the plaintiffs would have the effect of undoing the settlements, as plaintiffs sought "return of part of the monies that were specified in and ordered pursuant to the settlement agreements." *Id.* at 120. Nonetheless, *Rooker-Feldman* did not apply, as the plaintiffs challenged the City's conduct procuring the settlements—specifically, the "policy of New York City . . . to assert improper and inflated liens." *Id.* at 121. The state courts, "by approving the settlements, at most only 'ratified, acquiesced in, or left unpunished' an anterior decision by the City of New York." *Id.* (quoting *Hoblock*, 422 F.3d at 88) (alterations omitted). Likewise, in this case, the state courts at most "ratified, acquiesced in, or left unpunished" the conduct of the City demanding the challenged waivers of constitutional rights.

The District Court endeavored to distinguish *Green*, but appears to have misunderstood the facts of the case. The District Court characterized the claim at issue in *Green* as asserting that the "City had improperly deducted money from settlements" and stated that this deduction was "independent of the court-approved settlements." J.A. 268. In fact, however, the plaintiffs in *Green* challenged liens that were *included in* the terms of the settlement agreements. The court in *Green* was explicit about this fact, stating that "plaintiffs do ask for return of part of the monies that were specified in and ordered pursuant to the settlement agreements" and that "plaintiffs seek a reversal of the settlement amounts approved." 438 F.

Supp. 2d at 120; *see also id.* at 118 ("Pursuant to the settlement, $600,000 was paid . . . for full reimbursement of the Medicaid lien."). The challenged liens were not "independent" of the settlements, but were in fact included in the agreements that were so-ordered by the state courts. Yet *Green* fell outside *Rooker-Feldman* because the plaintiffs challenged the negotiation of the agreements, not their ratification by the state courts. The same is true here.

This conclusion finds further support in *Arnett v. Arnett*, No. 13-cv-1121, 2014 WL 2573291 (D. Utah June 9, 2014). In that case, the plaintiff sued her ex-husband asserting "various tort claims." *Id.* at *1. Because the couple had executed a general release as part of their divorce settlement, the plaintiff also sought to "rescind the [settlement agreement] based on coercion and lack of physical and/or mental capacity to agree." *Id.* (internal quotation marks omitted). Relying on the decision in *Green*, the court found this claim not barred by *Rooker-Feldman*. *Id* at *2. After all, the court explained, "the decree of divorce at most only ratified, acquiesced in, or left unpunished the [settlement agreement], and therefore does not bar this suit." *Id.* (quoting *Green*, 438 F. Supp. 2d at 120). Likewise, in this case, the state courts at most ratified settlement terms that were extracted by the City. Plaintiffs' injuries were therefore caused by the City, not by the state courts.

In re Chinin USA, Inc., 327 B.R. 325 (N.D. Ill. 2005), is also in accord. In that case, the trustee of a bankruptcy estate filed suit to bar enforcement of a state-

court settlement agreement in which a now-bankrupt corporation had agreed to pay $750,000, on the ground that the payment would be a fraudulent transfer. *Id.* at 329-30. There was no question that the plaintiff in *Chinin* was seeking to undo part of a state-court settlement; indeed, the court acknowledged that the plaintiff sought "[a] judgment in this court that the settlement agreement may not be enforced." *Id.* at 335. Nonetheless, the court held that *Rooker-Feldman* did not apply, as "the agreed transfer is the source of the alleged injury," and that "injury was not caused by the state court judgment, but rather by the settlement agreement." *Id.* at 334-35. Again, the same is true in this case. Plaintiffs' agreement to waive constitutional rights was extracted by the City in the course of settlement negotiations and was merely ratified by the state courts when they so-ordered the agreements.

Finally, *Capela v. J.G. Wentworth, LLC*, No. 09-cv-882, 2009 WL 3128003 (E.D.N.Y. Sept. 24, 2009), reached the same conclusion on similar facts. In that case, a putative class asserted that the defendants had violated the federal Truth in Lending Act in the course of negotiating modifications to state-court settlements—substituting a one-time lump sum payment for a series of payments over time. *Id.* at *1. Critically, because the agreement modified a structured settlement, it had to be approved by the state courts under New York's Structured Settlement Protection Act. *Id.* The federal court nonetheless found that *Rooker-Feldman* did not bar the claims of the putative class, as "this lawsuit does not complain of an injury caused

by the state court order . . . inasmuch as the order 'simply' approved the [agreement] entered into by the parties." *Id.* at *6 (quoting *Hoblock*, 422 F.3d at 88). The same is true here. Plaintiffs complain of injuries caused by agreements that were negotiated by the City and merely ratified by the state courts.

2. The District Court's Contrary Conclusion Is Both Factually And Legally Flawed.

Seeking to explain its contrary conclusion, the District Court reasoned that Plaintiffs only suffered injury after the settlements were so-ordered by the state courts, meaning "there was no preexisting injury for the so-ordering courts to ratify." J.A. 267. This conclusion is both factually and legally flawed.

Factually, the District Court erred when it assumed that Plaintiffs were not injured until the state courts so-ordered the settlements. To the contrary, two of the agreements provide that they are to become effective "immediately upon execution of the parties," J.A. 142, or "immediately upon execution by all parties," J.A. 255. Only one of the agreements provides that it shall become effective "upon execution and order of this Court." J.A. 199. Two of the three named Plaintiffs thus began to suffer injury as soon as they agreed to the City's settlement terms, and even before the settlements were so-ordered by the state courts. As explained at length below, application of *Rooker-Feldman* by no means turns on the happenstance of whether an agreement became effective before or after it was so-ordered by the state courts;

in either case, *Rooker-Feldman* should not apply. Nonetheless, for at least two of the three Plaintiffs, the District Court's opinion is built on a factual error.

Even assuming the District Court was right that Plaintiffs did not suffer injury until their agreements were ratified by the state courts, that still would not mean their injuries were "caused" by state-court judgments. To the contrary, this Court has repeatedly declined to apply *Rooker-Feldman* in situations where a defendant's allegedly-unlawful conduct produced injury because it resulted in a state-court judgment. *See Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 94-95 (2d Cir. 2015); *Friedman v. Self Help Cmty. Servs. Inc.*, 647 F. App'x 44, 47 n.3 (2d Cir. 2016) (summary order); *Gabriele v. Am. Home Mortg. Servicing, Inc.*, 503 F. App'x 89, 92 (2d Cir. 2012) (summary order); *Session v. Rodriguez*, 370 F. App'x 189, 191-92 (2d Cir. 2010) (summary order). After all, in such cases the plaintiff's injury was still "caused" by the defendant's conduct, even if one injurious *effect* of the defendant's conduct was to produce a state-court judgment. These cases confirm that Plaintiffs' injuries were caused by the City's conduct extracting the challenged settlement terms, even if one effect of the City's conduct was to produce state-court judgments ratifying those agreements.

This Court's decision in *Sykes*, 780 F.3d 70, is instructive, as the allegations in that case were closely akin to the allegations here. Just as Plaintiffs in this case seek to challenge "a lumbering and indiscriminate law enforcement program" that

was designed to produce settlement agreements waiving constitutional rights, J.A. 15 ¶ 1, the plaintiffs in *Sykes* alleged that the defendants had constructed a "default judgment mill" that was designed to produce default judgments in state-court debt collection actions. 780 F.3d at 75. The plaintiffs in *Sykes* were injured by the challenged "default judgment mill" because the defendant succeeded in obtaining default judgments in the state courts. *Id.* at 76, 78. Nonetheless, this Court held that *Rooker-Feldman* did not apply, as the plaintiffs' claims "speak not to the propriety of the state court judgments, but to the fraudulent course of conduct that defendants pursued in obtaining such judgments." *Id.* at 94-95. If this Court had instead applied the reasoning of the District Court below, precisely the opposite result would have obtained; the challenge to the "default judgment mill" in *Sykes* would have been barred because the plaintiffs were only injured by the challenged conduct when the state courts issued default judgments. The decision below therefore cannot be reconciled with this Court's decision in *Sykes*.

Other cases from this Circuit are similarly at odds with the District Court's reasoning. For instance, *Gabriele*, 503 F. App'x at 92, held that *Rooker-Feldman* did not apply where plaintiffs challenged "alleged litigation misconduct" notwithstanding that the plaintiffs were injured by that misconduct because the defendants succeeded in obtaining foreclosure judgments. Similarly, in *Friedman*, 647 F. App'x at 47 n.3, this Court held that *Rooker-Feldman* did not bar a claim

that defendants provided false information to the police, although the plaintiff was only injured by those statements because they resulted in a state-court order confining the plaintiff to a mental institution. And in *Session*, 370 F. App'x at 191-92, this Court held that a claim challenging police misconduct was not barred by *Rooker-Feldman*, although the alleged misconduct injured the plaintiff because it resulted in a state-court decision confining the plaintiff to jail. Under the District Court's reasoning, each one of those cases would have come out differently, as the plaintiffs were only injured when the defendant's challenged conduct resulted in a state-court judgment.

Decisions from other Circuits also implicitly reject the District Court's approach. *Martin v. Ball*, 326 F. App'x 191,193-94 (4th Cir. 2009), for instance, held that *Rooker-Feldman* did not bar an action by members of a state-court class against their attorney, challenging the attorney's conduct settling the case, notwithstanding the fact that the attorney's conduct would have caused no injury if the settlement had not been approved. Likewise, in *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 173 (3d Cir. 2010), a claim alleging a "conspiracy" between a litigant and a state court "to reach a predetermined outcome" was not barred, even though "attacking the state-court judgments," because "Defendants' actions, rather than the state-court judgments, were the source of [plaintiff's] injuries." And in *Pittman v. Cuyahoga Cty. Dept. of*

Children and Family Servs., 241 F. App'x 285, 288 (6th Cir. 2007), a claim against a state agency for its conduct in state-court child custody proceedings was not barred, even though that conduct produced injury when it resulted in an adverse custody decision, as "decisions confirm that *Rooker-Feldman* does not bar a federal-court challenge to an individual's improper conduct during a prior state court proceeding." These cases cannot be reconciled with the reasoning of the District Court below. Likewise, in this case, *Rooker-Feldman* does not apply because Plaintiffs' injuries were caused by the City's conduct extracting the challenged settlement terms, not by the state-court judgments that ratified the agreements.

B. Plaintiffs Are Not "State-Court Losers," As Plaintiffs Were Never In A Position To Appeal The State-Court Judgments.

This Court need go no further than the issue of causation to resolve this appeal, as a case must satisfy *each* of the four requirements for *Rooker-Feldman* to apply. *See Hoblock*, 422 F.3d at 85. However, the lack of causation is not the only reason that *Rooker-Feldman* does not apply. *Rooker-Feldman* is inapplicable for another reason, as well, as Plaintiffs were never in a position to appeal the state-court judgments and so do not qualify as "state-court losers."

1. A Party Qualifies As A "State-Court Loser" Only If The Party Was In A Position To Appeal A State Court Judgment.

Decisions from the Supreme Court and this Court establish that *Rooker-Feldman* does not apply to a party who was never in a position to appeal from a state-court judgment. These decisions point to a functional definition of a "state-court loser" as a party who was in a position to appeal the state-court judgment that would be called into question by the federal case.

The Supreme Court reached this conclusion in *Lance v. Dennis*, 546 U.S. 459, 465 (2006), as the Court refused to apply *Rooker-Feldman* to a party who was never in a position to appeal a state-court judgment. The question in that case was whether *Rooker-Feldman* ought to apply to a plaintiff who was "in privity" with a party to a state-court case; the Court held that it did not, as the plaintiffs, both non-parties, were not in a "position to ask [the Supreme Court] to review the state court's judgment." *Id.* (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994)). The Court explained that *Rooker-Feldman* "applies only in 'limited circumstances' where a party in effect seeks to take an appeal of an unfavorable state-court decision," and that the rationale underlying the doctrine could not be applied to a party who was never in a position to file an appeal in the state-court system. *Id.* at 466.

This Court reached the same conclusion in *Green v. Mattingly*, 585 F.3d 97, 102-03 (2d Cir. 2009). There, this Court refused to apply *Rooker-Feldman* to a

claim complaining of injury caused by an interlocutory and unappealable state-court order removing a child from a parent's custody pending further proceedings in family court. The Court concluded 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 that caused her alleged injuries." *Id.* Like the Supreme Court's decision in *Lance*, this Court's decision in *Green* points to a definition of a "state-court loser" as a party who was in a position to appeal the state-court judgment that would be called into question by the federal case.

2. Plaintiffs Were Never In A Position To Appeal From The Judgments Entered In Their Nuisance Cases.

Plaintiffs in this case do not qualify as "state-court losers," as they were never in a position to appeal from the state-court judgments effectuating their settlement agreements.

As noted above, *supra* p. 27, a party who wishes to challenge a stipulated settlement in New York state court does so by returning to the trial courts, not by filing an appeal. In fact, had Plaintiffs appealed from the judgments so-ordering their settlements on the grounds that the settlements violated the unconstitutional conditions doctrine, the appeal would have been dismissed. For instance, in *Gaudette v. Gaudette*, 234 A.D.2d 619, 621 (N.Y. App. Div. 1996), a party to a divorce proceeding appealed from a judgment of divorce on the grounds that the settlement resolving the divorce proceeding was the product of coercion, and the

appellate court dismissed—explaining that the challenge to the settlement ought to be raised in the trial court in the first instance. *See also Garrison v. Garrison*, 52 A.D.3d 927, 928 (N.Y. App. Div. 2008) (dismissing appeal because "challenges to the stipulation of settlement" had to be raised in the first instance in the trial court). Plaintiffs' claims cannot possibly invade the exclusive appellate jurisdiction of the Supreme Court, when the relevant appellate courts would have lacked the authority to consider Plaintiffs' challenge on appeal.

This case is therefore akin to *Hege v. Aegon USA, LLC*, 780 F. Supp. 2d 416 (D.S.C. 2011), which held that *Rooker-Feldman* did not bar a federal-court challenge to a state-court settlement. *Id.* at 422. The plaintiff in that case objected to a state class-action settlement in state court and then—after the state court overruled his objection—sued in federal court claiming that the settlement violated due process. *Id.* at 420-21. The court concluded that this action was not barred by *Rooker-Feldman* because, under the relevant state law, an absent class member who objected to a settlement could not appeal the decision approving the settlement and instead had to challenge the settlement by filing a new case in trial court. *Id.* at 422-23. The court explained 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. The same reasoning applies here. Just like the plaintiffs in *Lance*, *Green*, and *Hege*,

Plaintiffs in this case were never in a position to file a state-court appeal, so it makes no sense to say that their claims fall within the Supreme Court's exclusive appellate jurisdiction.

The District Court reached a contrary conclusion because it applied a different test for whether Plaintiffs are "state-court losers," reasoning that *anyone* who is subject to a state-court settlement should be deemed a state-court loser. *See* J.A. 265-66. It is true that the Eastern District of New York articulated such a rule in *Green v. City of New York*, 438 F. Supp. 2d at 119, stating that it is "sufficient for plaintiffs to allege that the court-approved settlements somehow violated their rights," but the court reached this issue only in *dicta*, as the court ultimately held that *Rooker-Feldman* did not apply because the plaintiff's injuries were not caused by the state court's approval of the settlement. *See supra* pp. 30-31. The conclusion that the plaintiff qualified as a state-court loser played no role in the decision.[6] Meanwhile, the Supreme Court in *Lance* and this Court in *Green v. Mattingly* actually held that *Rooker-Feldman* does not apply to a plaintiff who was never in a position to appeal, and those holdings should control the outcome here.

[6] The District Court also cited *Johnson v. Orr*, 551 F.3d 564, 568 (7th Cir. 2008), and *Allianz Ins. Co. v. Cavagnuolo*, No. 03-cv-1636, 2004 WL 1048243, at *6 (S.D.N.Y. May 7, 2004), for the proposition that a so-ordered settlement agreement can qualify as a "judgment" for purposes of *Rooker-Feldman*. That, however, is a separate question from whether a party to a settlement is a "state-court loser." Even if an order approving a settlement constitutes a "judgment," it does not follow that every party to the settlement is a "state-court loser." *See also infra* pp. 48-50 (distinguishing *Johnson* and *Allianz* on their facts).

C. Plaintiffs Do Not Seek Review And Rejection Of A State-Court Judgment.

Finally, while this Court need not go beyond the foregoing to resolve this appeal, *Rooker-Feldman* is inapplicable for a third reason. Plaintiffs do not seek "review and rejection" of a state-court judgment, *Hoblock*, 422 F.3d at 85, as Plaintiffs do not claim that the state courts erred by approving the settlements and do not seek to vacate the orders dismissing the underlying nuisance suits.

Plaintiffs do not seek "review" of state-court judgments, as Plaintiffs do not claim the state courts erred by approving the settlements. To the contrary, refusal to effectuate the settlements would not have remedied the constitutional violations at issue. Recall that Plaintiffs assert the City violated the unconstitutional conditions doctrine by conditioning a benefit—settlement—on agreements to waive constitutional rights. *See supra* pp. 16-17. Courts remedy an unconstitutional conditions violation by restoring the rights that were waived, *not* by taking away the benefit that was used to extract the waiver; for example, where government improperly conditions a building permit on an agreement to provide an easement, the remedy is to invalidate the easement, not to take away the building permit. *See, e.g.*, *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837, 860-61 (1987). By contrast, if the state courts had refused to so-order the settlements at issue here, they would have taken away the benefit of settlement. That "remedy" would have placed Plaintiffs in an even worse position than the one they occupy now, as

Plaintiffs would be left facing the risk of eviction from their homes and businesses. Plaintiffs do not argue—and have never argued—that the settlements should have been rejected.

Plaintiffs also do not seek "rejection" of state-court judgments, as they do not seek to undo the state-court orders effectuating the settlements. Plaintiffs emphatically do not want to see the underlying nuisance cases reopened; Plaintiff have no interest whatsoever in being thrust into a position where they are at risk of being evicted from their homes and businesses. Instead, Plaintiffs seek a judgment barring the City from enforcing particular provisions of the settlement agreements on the grounds that those particular provisions violate the unconstitutional conditions doctrine. *See* J.A. 66-67 ¶ E. That remedy would leave in place the state-court judgment effectuating the settlements and dismissing the City's nuisance suits; the state courts would not be forced to take any further action in the nuisance suits, and the state-court judgments would not be vacated or otherwise disturbed. That remedy also would not have to render the *entire* settlement agreement unenforceable. For example:

- All three Plaintiffs agreed that they would be subject to permanent injunctions prohibiting them from violating New York's Nuisance Abatement Law. *See* J.A. 141 ¶ 1; J.A. 199 ¶ 3; J.A. 251 ¶ 2-3. Plaintiffs are not challenging those provisions of the agreements.

- All three Plaintiffs agreed to release any claim for damage to personal property located at their home or business caused by the closure of the premises. *See* J.A. 142 ¶ 6; J.A. 199 ¶ 7; J.A. 254 ¶ 9. Except to the extent the City invokes those releases to bar the claims at issue, Plaintiffs are not seeking to challenge those provisions.
- Plaintiff Sung Cho agreed to pay $2,000 as part of the settlement of his nuisance case and does not seek to recoup that amount. J.A. 254 ¶ 8.

In short, the remedy Plaintiffs seek would not undo the state-court judgments dismissing the underlying nuisance eviction suits. The remedy would simply bar the City from enforcing waivers of constitutional rights that it obtained in settlement negotiations.

In re Chinin USA, Inc., 327 B.R. 325, 335 (N.D. Ill. 2005), found *Rooker-Feldman* inapplicable to a federal-court challenge to a state-court settlement on precisely these grounds. The plaintiff in *In re Chinin* challenged a settlement as a fraudulent transfer in violation of federal bankruptcy law, and, as noted above, *supra* p. 33, the court found *Rooker-Feldman* inapplicable because the challenged injury was caused by the agreement rather than its ratification by the state courts. In addition, however, the court also reasoned that the plaintiff's claims "accept the state court finding that a valid settlement agreement exists" and "go beyond that by alleging that part of that agreement, the transfer of claims, gives rise to a new and

different cause of action." 327 B.R. at 335. For that reason, the court held that a "judgment in this court that the settlement agreement may not be enforced . . . is permitted under *Rooker-Feldman*." *Id.* Likewise, here, Plaintiffs accept the state court's ratification of the settlement agreements and claim that the agreements give rise to "a new and different cause of action" under the Constitution.

Beyond the settlement context, courts likewise hold that a plaintiff does not seek "review and rejection" of a state-court judgment simply because the plaintiff seeks relief that might interfere with enforcement of the judgment in some respects. In *McCrobie v. Palisades Acquisition XVI, LLC*, 664 F. App'x 81, 83 (2d Cir. 2016), for instance, this Court held that *Rooker-Feldman* did not apply to a case raising federal challenges to a party's enforcement of a state-court judgment, as the challenge to the party's enforcement was "not the same as questioning whether the state court's original default judgment has continuing legal validity." Likewise, in *MSK Eyes Ltd. v. Wells Fargo Bank, N.A.*, 546 F.3d 533, 539 (8th Cir. 2008), the Eighth Circuit allowed a plaintiff to pursue a claim challenging a defendant's conduct enforcing a default judgment on the grounds that the claim would not actually "overturn the state court's order." *See also Iqbal v. Patel*, 780 F.3d 728, 730 (7th Cir. 2015) (while a plaintiff generally "cannot have [state-court] judgments annulled," a plaintiff may nonetheless obtain relief that is "intertwined" with a state-court judgment). Because Plaintiffs do not seek to undo the dismissal

of the underlying nuisance suits, they do not seek "review and rejection" of the state court's orders in any real sense.

D. Cases Cited By The District Court Are Easily Distinguished.

Against all the foregoing, the District Court cited several decisions that applied *Rooker-Feldman* to plaintiffs who had entered a state-court settlement. Those cases, however, are readily distinguished, as they involve plaintiffs who claimed to have been injured by the legal rulings of state-court judges and who sought federal-court review of those state-court decisions.

For instance, the District Court relied on *Fraccola v. Grow*, 670 F. App'x 34 (2d Cir. 2016) (summary order), although the plaintiff in that case had actually sued a state-court judge for making erroneous legal rulings. Whereas Plaintiffs in this case challenge the conduct of the City in settlement negotiations, and do not claim that the state courts erred by so-ordering the settlements, the plaintiff in *Fraccola* asserted that a state-court judge "violated his rights by so-ordering a stipulated settlement." *Id.* at 35. In addition, while Plaintiffs in this case were never in a position to appeal the judgments so-ordering their settlements, the plaintiff in *Fraccola* had repeatedly challenged the settlement in state court and could have appealed the decisions refusing to provide that relief. *See Fraccola v. Grow*, No. 15-cv-847, 2016 WL 344972, at *1 (N.D.N.Y. Jan. 27, 2016). And finally, while Plaintiffs in this case do not seek to disturb the judgments dismissing the

underlying nuisance suits, the plaintiff in *Fraccola* sought a declaratory judgment that the state courts acted without "Subject Matter Jurisdiction" in order to "effectively void every judgment . . . previously decided." *Id.* at *4. These cases are distinct in almost every respect: The plaintiff in *Fraccola* claimed to have been injured by state-court judgments, could have raised that claim through a state-court appeal, and sought an order that would undo the state-court judgments.

The District Court also cited *Johnson v. Orr*, 551 F.3d 564 (7th Cir. 2008), but that case is similarly distinct. In that case, a plaintiff purchased a property at a tax sale, consented to a state-court judgment cancelling the sale, and then returned to state court in an unsuccessful attempt to force the county clerk to issue him a deed for the property. *Id.* at 566. The plaintiff's injuries were caused by a state court judgment because he "alleges that he has been injured by the court's failure to issue him a tax deed." *Id.* at 568. The plaintiff was in a position to appeal from a state-court judgment because, at a minimum, he could have appealed the second state-court judgment declining to issue him a deed. *Id.* at 567. And, perhaps most importantly, whereas the Plaintiffs here do not seek to set aside the state court judgments dismissing the underlying nuisance suits, the plaintiff in *Orr* sought to undo the state-court judgment cancelling the tax sale. *Id.* at 569. Indeed, whereas Plaintiffs in this case do not actually argue that the state courts erred by approving the settlements, the plaintiff in *Orr* argued "that the state court's judgment was in

error" because "the property is not tax exempt." *Id.* In other words, whereas Plaintiffs here challenge the conduct of the City in negotiating particular waivers of constitutional rights, the plaintiff in *Orr* challenged the merits of state court judgments and sought to undo those judgments completely.

Thompson v. Donovan, No. 13-cv-2988, 2014 WL 5149037 (S.D.N.Y. Oct. 14, 2014), is also readily distinguished, as that case involved a challenge to a state-court merits decision. In *Thompson*, a state trial court entered a decision on the merits ordering tenants evicted, and the tenants appealed from that decision. *Id.* at *3-4. Rather than pursue the state-court appeal, however, the tenants decided to enter a settlement dismissing the appeal and file a new suit in federal court arguing that their eviction would violate federal housing law. *Id.* at *4-5. The plaintiffs in *Thompson* alleged injuries that were caused by the trial court decision ordering their eviction; they were undoubtedly in a position to appeal that decision and did in fact file an appeal before voluntarily dismissing it; and their federal case sought to undo the state-court judgment of eviction. For all those reasons, the case amounted to a request for *de facto* appellate review of the state trial court. *Id.* at *12 ("Here Plaintiffs attempt to challenge the decision, *reached by the Yonkers City Court*, that Landlord could evict Plaintiffs." (emphasis added)). That case has nothing in common with Plaintiffs' claims here, as Plaintiffs allege that they were injured by the City's conduct in settlement negotiations, were never in a position to

appeal from the state court orders ratifying the settlements, and do not seek to undo the state court judgments dismissing the underlying nuisance eviction suits.

Finally, the District Court's reliance on *Allianz Ins. Co. v. Cavagnuolo*, No. 03-cv-1636, 2004 WL 1048243 (S.D.N.Y. May 7, 2004), is misplaced, as that case predates the Supreme Court's narrowing of the *Rooker-Feldman* doctrine in *Exxon Mobil*. In fact, *Allianz* is a prime example of the kind of overly-broad application of *Rooker-Feldman* that the Supreme Court disapproved: An insurance company sued for indemnification after paying a state-court settlement; the defendant sought to argue that indemnification was improper because the case was not settled on reasonable terms; and the court held that defense to indemnification was barred by *Rooker-Feldman* because any consideration of the fairness of the settlement would "entail review of a state court judgment." *Id.* at *5. That holding—applying *Rooker-Feldman* to bar a defense to a claim raised by a defendant who was simply seeking to preserve the status quo—cannot be squared with *Exxon Mobil*.[7] The District Court's reliance on case law that predates *Exxon Mobil*—and that applies an outdated, overly-broad version of *Rooker-Feldman*—only serves to show how far the District Court strayed from a proper application of *Rooker-Feldman*.

[7] *See Exxon Mobil*, 544 U.S. at 284 (holding that *Rooker-Feldman* applies to "cases *brought by* state-court losers complaining of injuries caused by state-court judgments"); *see also Hoblock*, 422 F.3d at 85 (for *Rooker-Feldman* to apply, "the federal-court plaintiff must have lost in state court").

III. The Decision Below Improperly Supplants State Preclusion Doctrine And Inappropriately Limits The Jurisdiction Of The Federal Courts.

The District Court's broad view of *Rooker-Feldman* is not just contrary to precedent, but would also result in precisely the error that the Supreme Court warned against in *Exxon Mobil*. The Supreme Court explained that, unless appropriately confined, *Rooker-Feldman* threatens to "supplant preclusion doctrine" and "overrid[e] Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts." *Exxon Mobil*, 544 U.S. at 284. The decision below has precisely that effect.

The decision below upends the general rule of preclusion doctrine, which affords state-court judgments the *same* preclusive effect in federal court that they enjoy in the state court system. *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1005 (1994). In the court below, the City readily acknowledged that the settlements could be challenged in state trial court, as the City informed the court that "[u]nder New York law, a court may vacate a stipulation of settlement upon a showing of good cause" and stated that Plaintiffs' "allegations could fit into the cognizable grounds for vacatur under New York law." D.E. 46 at 24. If the judgments so-ordering the stipulations would not preclude a state court from granting the relief that Plaintiffs seek, then Plaintiffs should be allowed to seek that relief in federal court as well.

This rule of preclusion doctrine accords with a more general principle, running through the cases, that courts allow plaintiffs to pursue federal claims in federal courts. For instance, in *Patsy v. Board of Regents*, 457 U.S. 496, 504, 507 (1982), the Supreme Court held that there is no requirement to exhaust state-court remedies before bringing a federal-court action under Section 1983 and explained that Section 1983 was intended to "'throw open the doors of the United States courts'" to federal constitutional claims. Other cases recognize that "the federal courts have a virtually unflagging obligation . . . to exercise the jurisdiction given them." *In re Joint E. and S. Dist. Asbestos Litig.*, 78 F.3d 764, 775 (2d Cir. 1996) (citation and quotation marks omitted); *see also Kanciper v. Suffolk Cty. Soc'y for the Prevention of Cruelty to Animals, Inc.*, 722 F.3d 88, 92 (2d Cir. 2013). Cases where federal constitutional claims can be pursued only in state court are the exception, not the rule.

The District Court's contrary decision has the peculiar effect of creating a class of federal constitutional claims that can only be raised in state trial court. There is no question that Plaintiffs could return to state trial court to challenge their settlement agreements. Yet the court below held that Plaintiffs cannot bring that very same type of claim in federal court, despite the fact that Plaintiffs allege a violation of the federal constitution. This is exactly the result *Exxon Mobil* warned against, "overriding Congress' conferral of federal-court jurisdiction concurrent

with jurisdiction exercised by state courts." 544 U.S. at 283. Plaintiffs should not be denied a federal forum for these federal claims.

CONCLUSION

For the foregoing reasons, the decision and order of the court below should be reversed.

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Respectfully submitted,

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Dated: March 28, 2018

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