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Getting *Younger* — A Guide To Abstention, *Rooker-Feldman*, And Other Defenses To Federal Civil Rights Actions That We All Learned In Law School, But May Have Forgotten

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INTRODUCTION

Remember law school? We can look back fondly on those halcyon days of reading old cases and then having a professor ask withering questions with apparently no correct answer, all in an effort to get us to think like lawyers. And all the stuff we memorized for exams — "doctrines," "tests," and "rules," each named for the case in which it first arose.

Shockingly, once we're in practice, it turns out that a lot of the stuff we learned really is useful. Those isolated case names have real meaning in day to day litigation practice, especially in federal court, and in civil rights cases.

The purpose of this article is to provide an overview of various "technical" defenses to federal civil rights suits, many of which may sound vaguely familiar from a law school class on federal courts or civil procedure but are not necessarily the first thing you think of when a new case comes into the office. It does not contain a full blown discussion of every aspect of the defenses. The goal is to put these defenses on your radar so to speak, so that when an appropriate case comes in, you at least know where to start.

I. ABSTENTION

General Principle.

Abstention is the decision of a federal court not to hear a case that it would otherwise have jurisdiction to decide. Although the Supreme Court has recognized that the federal courts have an obligation to hear matters that are properly before them, nonetheless, reasons of comity between state and federal courts, as well as judicial efficiency, may justify a federal court staying or dismissing a case, in light of pending state proceedings.

Many scholars have observed that expansion of the abstention doctrine has run parallel with the explosion of federal civil rights litigation challenging state and local government action following the Supreme Court's decision in *Monroe v. Pape*, 365 U.S. 167 (1961), as well as the spate of criminal procedure decisions by the Warren Court.

A. *Younger* Abstention

Because so many federal civil rights suits are spawned by law enforcement activity and criminal prosecutions, almost every criminal case presents at least the potential for federal court intervention. *Younger* abstention is what prevents federal courts from interfering with pending state criminal proceedings, though it has ultimately been expanded to foreclose federal intervention in a broad range of state enforcement proceedings.

- **The general rule: A federal court will not enjoin, or otherwise interfere with a pending state prosecution, or a state court's performance of judicial duties.**

In *Younger v. Harris*, 401 U.S. 37 (1971), the plaintiff was being prosecuted in state court and brought a section 1983 action against the district attorney, arguing that the criminal statute impaired his First Amendment rights. The district court found the statute was unconstitutional and enjoined further prosecution of the plaintiff. The Supreme Court reversed.

The Court held that injunctive relief against state criminal prosecutions was generally inappropriate for two reasons. First, under basic principles of equity, an injunction is only proper where the plaintiff is suffering irreparable harm and has no adequate remedy at law. A criminal defendant may typically raise any constitutional defense in the context of the state proceedings, and hence suffers no

irreparable injury that cannot be redressed "at law" in the state case. Second, notions of comity that form the basis of "our federalism" dictate that federal courts respect the co-equal status of state courts, with federal intervention in the criminal process limited to direct review of any conviction by the Supreme Court, or via habeas corpus.

In so holding, the Court noted there might be exceptions where a criminal defendant had no means to litigate the underlying constitutional claim, or where multiple prosecutions had been brought against a defendant in bad faith. The Court also emphasized that federal courts could still enjoin enforcement of an unconstitutional statute *prior* to commencement of a prosecution.

The Court has steadily expanded the scope of *Younger* abstention. In *Samuels v. Mackell*, 401 U.S. 66 (1971), the Court held that *Younger* foreclosed a federal court from granting declaratory relief concerning a pending state criminal prosecution. In *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), the Court held that *Younger* applied to a federal action challenging a state court nuisance abatement proceeding. The Court found that although the nuisance proceeding initiated by the local public entity was technically civil in nature, it was akin to a criminal case, as it was enforcing a local law. Similarly, in *Trainor v. Hernandez*, 431 U.S. 434 (1977), the Court held that *Younger* applied to a civil action brought by the state against welfare recipients who had fraudulently obtained benefits. The Court again emphasized that the action was brought by the state acting in its sovereign capacity, and that civil remedies had been pursued as an alternative to criminal charges in order to recover the benefits improperly paid to the recipients.

In *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986), the Court applied *Younger* to a state administrative proceeding.

The Court noted that the administrative proceeding was judicial in nature, and that important state interests were involved.

The Court has also applied *Younger* to civil actions where the state itself is not a party, but where significant state judicial interests are implicated. In *Juidice v. Vail*, 430 U.S. 327 (1977), the Court held that *Younger* abstention applied to a federal action seeking to challenge a state court civil contempt proceeding. The Court reasoned that comity dictated that a federal court should not interfere with a proceeding at the heart of the state court's power to compel compliance with its orders. In *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), the Court found that similar principles dictated that *Younger* be applied to a federal action that challenged a state court order setting an appeal bond. Like contempt proceedings, the posting of a bond was a mechanism by which state courts effectuate compliance with their orders and judgments.

Younger abstention is also appropriate where equitable relief would interfere with the administration of state courts, even if there is no individual pending state proceeding. In *O'Shea v. Littleton*, 414 U.S 488 (1974), the Court held that *Younger* abstention was warranted where plaintiff sought an injunction challenging the bail and sentencing practices of a municipal court system. The Court noted that the requested injunction would potentially insert the federal court into every state court proceeding, as criminal defendants could assert a particular outcome in their case violated the injunction.

The importance of not interfering with state judicial interests was underscored in *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982). In *Middlesex*, the Court held that *Younger* applied to a state administrative proceeding involving attorney discipline, because

regulation of attorneys was closely related to administration of the state's judicial system.

Although *Younger* itself concerned an injunction against an ongoing prosecution, the Supreme Court has held that *Younger* abstention may be required where prosecution was not actually commenced at the time the federal suit was filed, but only shortly thereafter. In *Hicks v. Miranda*, 422 U.S. 332 (1975), the court held that so long as the state proceeding commenced before the federal court conducted any "proceedings of substance on the merits," then *Younger* abstention applied. In *Hicks*, the Court found that the district court's denial of a temporary restraining order was not a proceeding on the merits. In contrast, in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), the Court held that an order granting a preliminary injunction was a proceeding on the merits, and hence *Younger* abstention was inapplicable.

When is an action "pending" in state court for purposes of *Younger*? Several Circuits have held that grand jury proceedings are sufficient to constitute pending proceedings, even if no criminal complaint or indictment has been filed. *See Texas Ass'n of Business v. Earle*, 388 F.3d 515 (5th Cir. 2004); *Kaylor v. Fields*, 661 F.2d 1177 (8th Cir. 1981); *Craig v. Barney*, 678 F.2d 1200 (4th Cir. 1982).

Once filed, a state court lawsuit remains pending for purposes of *Younger* through exhaustion of appellate remedies. The Supreme Court has noted, however, that it is an open question whether there is still a pending state proceeding when an administrative body has rendered a final decision, but the losing party may seek review of the decision in state court. *New Orleans Public Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 369 n.4 (1989). The Circuits are divided on the issue. Availability of state court review means proceeding still pending: *Maymo-Melendez v. Alvarez-Ramire*z, 364 F.3d 27, 35 (1st Cir. 2004); *Majors v.*

Engelbrecht, 149 F.3d 709, 713 (7th Cir. 1998); *O'Neill v. City of Philadelphia*, 32 F.3d 785, 790-91 (3d Cir. 1994); *Alleghany Corp. v. Pomeroy*, 898 F.2d 1314, 1316-17 (8th Cir. 1990). State administrative enforcement proceeding no longer pending when the agency proceeding has been completed, notwithstanding availability of state court review: *Norfolk & W. Ry. Co. v. Pub. Utils. Comm'n*, 926 F.2d 567, 572 (6th Cir. 1991); *CECOS Int'l, Inc. v. Jorling*, 895 F.2d 66, 72 (2d Cir. 1990); *Thomas v. Tex. State Bd. of Med. Exam'rs*, 807 F.2d 453, 456 (5th Cir. 1987).

Based on the guidelines set by the Supreme Court, a potential *Younger* defense may be viable if the federal suit seeking equitable relief arises out of, or may impact, a pending administrative or judicial proceeding prosecuted by the defendant public entity. The issue often arises in land use proceedings, such as nuisance abatement, zoning challenges, permitting disputes, or in employee disciplinary matters.

One key point to note is that the Supreme Court has left open the issue as to whether *Younger* applies where the federal suit seeks damages as opposed to injunctive or declaratory relief. At most the Court has suggested that assuming that *Younger* applies in such cases, a federal court should stay as opposed to dismiss the federal action. *See Deakins v. Monaghan*, 484 U.S. 193 (1988). The federal appellate courts are divided on whether *Younger* applies to federal suits for damages. *Younger* does not apply: *Alexander v. Ieyoub*, 62 F.3d 709, 713 (5th Cir. 1995); *Giulini v. Blessing*, 654 F.2d 189, 192-94 (2d Cir. 1981). *Younger* applies to suits seeking damages: *Amerson v. Iowa*, 94 F.3d 510, 513 (8th Cir. 1996); *Kyricopoulos v. Town of Orleans*, 967 F.2d 14, 15 n.1 (1st Cir. 1992); *Traverso v. Penn*, 874 F.2d 209, 213 (4th Cir. 1989); *Williams v. Hepting*, 844 F.2d 138, 144-45 (3d Cir. 1988); *Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir.

1986); *Doby v. Strength*, 758 F.2d 1405, 1406 (11th Cir. 1985); *Parkhurst v. Wyoming*, 641 F.2d 775, 777 (10th Cir. 1981). However, consistent with *Deakins*, the circuits are uniform in holding that even if *Younger* apples to such claims, a district court should stay as opposed to dismiss the federal action.

The Supreme Court has also recognized some exceptions to *Younger* abstention. Abstention is inappropriate where the constitutional claim cannot be adjudicated in the state forum (*Gerstein v. Pugh*, 420 U.S. 103 (1975)), or the state proceedings have been brought in bad faith, i.e., with no reasonable expectation of conviction, or are biased (*Kugler v. Helfant*, 421 U.S. 117 (1975); *Gibson v. Berryhill*, 411 U.S. 564 (1973)), or where a statute is "flagrantly and patently violative of express constitutional prohibitions" in every conceivable manner (*Younger*, 401 U.S at 53-54).

B. *Pullman* Abstention

Pullman abstention is a function of judicial policy, specifically the policy of federal courts to avoid addressing constitutional issues unless absolutely necessary, and to ensure correct adjudication of a constitutional issue that is based on a state statute. It typically arises in federal suits that challenge a newly enacted statute, ordinance or policy.

- **The general rule: A federal court will abstain from a case presenting a federal constitutional question, where resolution of an unsettled issue of state law might eliminate the need to decide the question, or materially alter the federal court's resolution of the question.**

In *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), various parties filed a federal suit seeking to invalidate a state regulation concerning railroad staffing, arguing both that it was contrary to state law, and

violated the federal constitution. A three judge district court panel issued an injunction, concluding that the regulation was invalid under state law. The Supreme Court reversed, holding that the district court should have abstained from hearing the matter, pending resolution of the state law issue by a state court. The Court held that where resolution of a federal constitutional issue could be avoided, or materially altered, by interpretation of unsettled state law, federal courts should abstain in favor having a state court resolve the critical state law issue.

Pullman abstention therefore requires two elements in a federal action presenting a constitutional claim. First, the case must present an unsettled question of state law. Second, there must be the possibility that resolution of the state law issue might eliminate the need to decide, or materially alter the nature of the constitutional issue.

What does it mean for state law to be unsettled? There has to be some uncertainty or ambiguity as to the state law that is the subject of the constitutional challenge. For example, in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984) and *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), the Court noted that if a state statute is clear in its terms, the mere fact that the state courts have not interpreted the provision, does not mean the law is unsettled so as to justify *Pullman* abstention.

In addition, if a state statute is ambiguous, but state courts have interpreted the provision in a particular manner, then the law is not unsettled for purposes of *Pullman* abstention. This includes interpretations of state law not just by a state supreme court (*Kusper v. Pontikes*, 414 U.S. 51 (1973)), but by a state's lower courts, including trial courts. In *City of Houston v. Hill*, 482 U.S. 451 (1987), the Court noted that *Pullman* abstention was not warranted in a case challenging a statute on First Amendment grounds because numerous state trial courts had

declined to give the provision a narrow construction that would avoid an overbreadth problem.

Figuring out whether a state statute is susceptible to a construction that might eliminate the need to address, or materially change the analysis of the constitutional claim, can be difficult, because the Supreme Court has not articulated a clear standard. In *Zwickler v. Koota*, 389 U.S. 241, 251 n.14 (1967), the Court stated that the state statute had to be "*obviously* susceptible" to a limiting construction. In *Harman v. Forssenius*, 380 U.S. 528, 535 (1965), the Court had suggested a lower standard, i.e., the state statute need be only "*fairly*" susceptible to a limiting construction. In *Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 43 (1970), the Court invoked an even lower standard, noting that a state law only had to be "*conceivably*" subject to a narrow construction. On the other hand, in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 237 (1984), the Court made it clear that a "*bare*, though unlikely, *possibility*" that state courts might obviate the need to decide the federal claim, was insufficient to justify *Pullman* abstention.

The Court has also not been entirely clear on whether *Pullman* abstention is mandatory or discretionary. It has sometimes stated that if the *Pullman* factors are met, then a federal court is "required" to abstain (*Babbitt v. UFW Nat'l Union*, 442 U.S. 289 (1979)) or that the court "should" abstain. However, it has also emphasized the discretionary nature of *Pullman* abstention. Even where both *Pullman* elements are satisfied, a federal court may still be justified in proceeding because other compelling factors might make it undesirable to await adjudication of an issue in state court. In *Pike v. Bruce Church, Inc*., 397 U.S. 137 (1970), the Court noted that one of the factors that made abstention inappropriate was the fact that any delay in adjudicating the issue could be financially devastating to the plaintiff. The Court has also recognized that certain important, and often time

sensitive, constitutional issues such as exercise of First Amendment rights (*Baggett v. Bullit*, 377 U.S. 360 (1964)) or voting rights (*Harman v. Forssenius*, 380 U.S. 528 (1965)) might make abstention improper in a particular case, although the Court has not made a blanket exception for cases involving those rights.

C. *Burford* Abstention

Burford abstention is based on the premise that federal courts should not interfere with state administrative schemes that require unique expertise or uniform application with respect to subjects that are of critical state concern, where the administrative decisions are subject to later judicial review. It is often raised in the context of challenges to state regulatory schemes involving public resources or licensing.

- **The general rule: A federal court should abstain where the case presents a difficult question of state law concerning a matter of substantial public importance that transcends the interest of the party, or where immediate federal review of individual administrative decisions would disrupt state efforts to create a coherent policy concerning matters of substantial public concern.**

In *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), the plaintiff challenged the decision of a Texas regulatory agency granting oil drilling permits, arguing that issuance of the permits violated state and federal law. The district court granted an injunction, and the Supreme Court reversed, concluding the court should have abstained from hearing the case. The Court noted that Texas had set up a comprehensive regulatory scheme for the oil and gas industry, including a specialized decision-making and review process, that might be disrupted if individual permit determinations could be immediately challenged in federal court. The state's interest in setting uniform policy with respect to a vital industry,

outweighed any interest in immediate federal court review. In addition, the administrative decisions were subject to judicial review, where any federal issue could be raised, and if necessary, subsequently resolved by the Supreme Court on direct review.

In *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S. 341 (1951), the Court applied *Burford* in holding that the district court should have abstained from an action challenging the decision of a state agency to require a railway company to maintain service on specified routes. As in *Burford*, the court emphasized the state's interest in regulating a matter of state-wide concern, as well as the availability of eventual judicial review of any decision.

In contrast, in *Zablocki v. Redhail*, 434 U.S. 374 (1978), the Court declined to apply *Burford* to a suit challenging a state statute requiring court permission before specified individuals could be married. The Court noted the case was basically a routine constitutional challenge to a statute and did not involve complex issues of state law, resolution of which would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

Similarly, in *New Orleans Public Service, Inc. v. Council of New Orleans*, 491 U.S. 350 (1989), the Court found *Burford* inapplicable to a suit challenging a local agency's refusal to approve an electric rate increase. The Court noted that although the state had a comprehensive regulatory scheme, that, in and of itself was not sufficient to warrant preemption. The plaintiff was challenging the order based on federal preemption, an issue that did not require extensive analysis of the state law, and there was no interest at stake that transcended the interests of the individual parties. The Court emphasized that when a state administrative decision is subject to prompt state judicial review, a federal court should abstain where the case presents a difficult question of state law concerning a matter of substantial

public importance that transcends the interest of the party, or where immediate federal review of individual administrative decisions would disrupt state efforts to create a coherent policy concerning matters of substantial public concern.

As noted, *Burford* abstention is often applied in cases involving regulation of public resources or utilities and matters such as corporate dissolution or receiverships. It is currently an open issue whether *Burford* abstention is applicable solely to the decisions of state administrative agencies, or whether *Burford* may be applied to the decisions of a local agency made pursuant to a state authorized procedure. The Third and Sixth Circuits have held that *Burford* does not apply to local land use decisions that do not involve statewide, but only local policies. *See Heritage Farms, Inc. v. Solebury Township*, 671 F.2d 743 (3d Cir. 1982); *Sagniaw Housing Commission v Bannum*, *Inc.*, 576 F.3d 620 (6th Cir. 2009). In *Stratta v. Roe*, 961 F.3d 340 (5th Cir. 2020), the Fifth Circuit held that *Burford* was inapplicable to a federal takings claim based on the decision of a local water district, reasoning that the state regulatory scheme was not designed to assure uniform policy but left such matters to local discretion. However, the Fourth Circuit has applied *Burford* to a challenge to a local zoning decision, noting that land use planning is a matter of particular state concern. *See MLC Automotive, LLC v. Town of Southern Pines*, 532 F.3d 269 (4th Cir. 2008).

D. Colorado River Abstention

Colorado River abstention stems from concerns of judicial efficiency and the risk of conflicting adjudications when there are parallel state and federal lawsuits involving the same parties and same issues. It typically comes up in civil rights litigation when the plaintiff files a tort action in state court and a federal claim in federal court arising from the same facts.

- **General rule: In extraordinary circumstances a federal court may abstain from adjudicating a federal case, where there is a parallel state action involving the same parties and similar issues.**

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), the federal government filed suit in federal court on behalf of various Indian tribes, seeking a determination of water rights on federal lands. Shortly thereafter, a party to a state court water rights adjudication suit amended the complaint in that action to add the United States as a party, as permitted by a federal statute that expressly allowed the United States to be a party to such state proceedings. The district court stayed the federal proceedings pending determination of the state court suit, and the Tenth Circuit reversed, noting that none of the previously recognized abstention doctrines applied.

The Supreme Court upheld the district court decision to abstain. Although the Court noted that federal courts have an "unflagging" duty to hear cases that are properly before them, it held that in exceptional circumstances, a federal court had the discretion to stay a federal action pending resolution of a state suit involving the same parties and claims. The key inquiry is the extent to which considerations of judicial efficiency will be served by staying the federal suit. These considerations include which court first assumed jurisdiction over the particular property that is the subject of the dispute, the relative inconvenience of the federal forum, the interest in avoiding piecemeal litigation, and the order in which the suits were filed. The Court noted that abstention was justified here because the federal case had not progressed very far, the state court was nearby and had conducted extensive litigation of water rights, and the United States had been a party to other state water adjudication proceedings pursuant to the federal statute.

In *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655 (1978), a plurality of the Court applied the principles of *Colorado River* in upholding a district court's decision to abstain from hearing a federal securities action pending a decision in a state court suit between the parties involving a state reinsurance pool where one of the defenses was that the pool violated federal securities law. The plurality opinion suggests that a district court has very broad discretionary powers to stay a federal case pending disposition of a comparable state suit, and does not discuss the exceptional circumstances and factors identified in *Colorado River*.

However, in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983), the Supreme Court reaffirmed that *Colorado River* abstention is only appropriate in exceptional circumstances to be determined by consideration of the four factors noted in *Colorado River*, along with two others: 1) the presence of federal law issues and 2) whether the state forum will adequately protect the parties' interests. In *Moses H. Cone*, a hospital sued a contractor in state court to obtain a determination that the underlying contract dispute was not subject to arbitration. The contractor then filed an action in federal court to compel arbitration under the Federal Arbitration Act (FAA), but the district court stayed the federal action pending disposition of the state proceedings.

The Supreme Court held that abstention was improper, as none of the *Colorado River* factors justified staying the federal suit. First, neither court had acquired jurisdiction over any property. Second, the federal forum was just as convenient as the state forum. Third, there was no danger of piecemeal litigation of the merits of any claim, as the federal proceeding solely involved the manner of resolving the underlying merits. Fourth, although the state suit was filed first, it had not proceeded very far. Fifth, the federal suit involved federal law, and the presence of a federal claim generally weighs against abstention. Finally, the Court

noted that it was not clear that the state court would compel arbitration as required by the FAA, and hence it would be improper to defer to a forum that would not protect a party's interests.

The key factor in determining whether *Colorado River* abstention is even applicable is whether the state and federal proceedings are truly parallel. The two cases must involve the same parties and same issues. It is not enough that they involve the same facts. Although the legal claims do not have to be identical, they have to be closely related enough that the state court adjudication will ultimately dispose of the claims in the federal action as well.

Given the tightened standards applied in *Moses H. Cone*, it is often difficult to convince a federal court to abstain under *Colorado River*. This is especially true in section 1983 cases because of the significance of federal constitutional claims, and the aptitude federal courts have in addressing such issues.

One point to bear in mind is that if a federal action only seeks declaratory relief, a district court always has the discretion to abstain in favor of a pending state action, without regard to the *Colorado River* factors. In *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), the Supreme Court held that under the Declaratory Judgement Act district courts have independent discretion to stay a federal declaratory relief action pending disposition of parallel state proceedings.

II. THE ROOKER-FELDMAN DOCTRINE

General Principle.

The *Rooker-Feldman* doctrine bars lower federal courts from entertaining suits that seek to overturn a state court judgment. It is premised on the exclusive jurisdiction of the Supreme Court to review state court civil judgments via direct review, as well as the fact that while congress has allowed federal district courts to

review state court judgments for criminal convictions via habeas corpus, it has not extended that power to review of civil judgments.

- **General Rule**: **A federal district court lacks subject matter jurisdiction to entertain cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.**

The *Rooker-Feldman* doctrine is derived from two cases decided sixty years apart. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), parties defeated in state court filed suit in federal district court seeking relief. They asserted that the adverse state-court judgment was rendered in contravention of the Constitution, and asked the federal court to declare it null and void. The district court dismissed the action and the Supreme Court affirmed. The Court noted that the state court had acted within its jurisdiction, and if the state court decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. The Court held that federal district courts lacked the requisite appellate authority, for their jurisdiction was "strictly original" and among federal courts, Congress had empowered only the Supreme Court to exercise appellate authority to reverse or modify a state court judgment.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the two plaintiffs, neither of whom had graduated from an accredited law school, petitioned the District of Columbia Court of Appeals to waive a court rule that required D.C. bar applicants to have graduated from a law school approved by the American Bar Association. After the D.C. court denied their waiver requests, the plaintiffs filed suits in the United States District Court for the District of Columbia.

Citing *Rooker*, the Supreme Court held that the district court lacked authority to review a final judicial determination of the D.C. high court. The Court reaffirmed the principle that review of such determinations "can be obtained only in this Court."

The Supreme Court has subsequently clarified the doctrine and emphasized its limited scope. In *Johnson v. De Grandy*, 512 U.S. 997 (1994), the Court held that *Rooker-Feldman* does not apply to a federal suit brought by a non-party to the state suit, though it left open the question whether the doctrine might bar suit by a purely successor party such as an estate. In *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 644 n.3 (2002), the Court noted that the doctrine only applies to state judicial decisions, and not to administrative decisions of state agencies. In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), the Court made it clear that the doctrine only applies where the state court judgment is rendered before commencement of the federal action. The mere fact that a concurrently pending state suit goes to judgment before the pending federal suit, cannot deprive the federal district court of subject matter jurisdiction. The Court emphasized that any complications resulting from concurrently pending cases were best addressed via abstention or ordinary principles of claim preclusion.

There are several open issues concerning application of the doctrine. First, does the doctrine apply to the interlocutory decisions of state courts, for example, an order granting a preliminary injunction, as opposed to a final judgment in the case? In *Exxon Mobile*, the Supreme Court stated that the doctrine applies "after the state proceedings ended." Several circuits have interpreted that as barring application of the doctrine to interlocutory state court rulings. *See Burciaga v. Deutsche Bank National Trust Co.*, 871 F.3d 380, 385 (5th Cir. 2017); *Kowalski v.*

Boliker, 893 F.3d 987, 995 (7th Cir. 2018); *Malhan v. Secretary of U.S. Dep't of State*, 938 F.3d 453, 458-59 (3d Cir. 2019). However, the First Circuit has indicated the doctrine can apply so long as the parties to the state court proceeding are not pursuing further action with respect to the interlocutory order. *See Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 24-28 (1st Cir. 2005).

Second, when is a state court judgment final for purposes of the doctrine? Is a judgment final when issued by the trial court, or is a judgment only final once appellate review has been exhausted, or the time to seek it has passed? Citing the language from *Exxon Mobile* noted above, several circuits have held that *Rooker-Feldman* does not apply if the state court case is on appeal, or the time to appeal has not expired. *Green v. Jefferson Cnty. Comm'n*, 563 F.3d 1243, 1249-50 (11th Cir. 2009); *Dornheim v. Sholes*, 430 F.3d 919, 923 (8th Cir. 2005); *Guttman v. Khalsa*, 446 F.3d 1027, 1031-32 (10th Cir. 2006); *Parker v. Lyons*, 757 F.3d 701, 705 (7th Cir. 2014). However, there are numerous district court decisions, most notably out of the Second Circuit, which have applied the doctrine even though the state case was on appeal, reasoning that the entire purpose of the doctrine is to prevent district court review of state court judgments and supplant state appellate review.

In addition, the circuits are divided on the question whether the doctrine applies to federal suits arguing that the state court judgment was procured by extrinsic fraud. Claims for extrinsic fraud may proceed: *In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986); *Resolute Ins. Co. v. State of N.C.*, 397 F.2d 586, 589 (4th Cir. 1968); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004). No exception for extrinsic fraud: *Kelley v. Med-1 Solutions, LLC*, 548 F.3d 600, 604-05 (7th Cir. 2008); *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031,

1035-36 (8th Cir. 1999); *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014). It must be noted that some courts will consider an extrinsic fraud claim to the extent the plaintiff can show that their injury is derived from the fraudulent conduct itself, and not solely as a result of the judgment, with the notion being that the plaintiff is not seeking to void the judgment. *See*, *e.g.*, *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159 (3d Cir. 2010).

III. THE *HECK V. HUMPHREY* BAR

General Principle.

The *Heck v. Humphrey* bar prevents plaintiffs who have been convicted of a crime from challenging the validity of the conviction in a federal civil rights suit for damages unless and until the conviction has been reversed. It has been characterized as claim preclusion on steroids, and reflects the policy that state court criminal convictions are subject to review by federal courts only via direct review by the Supreme Court, or through habeas corpus proceedings.

- **General Rule: If a successful 42 U.S.C. § 1983 action for damages would necessarily imply the invalidity of a criminal conviction, a plaintiff cannot pursue the claim until the underlying conviction is reversed, invalidated, expunged, or otherwise nullified.**

While civil rights claimants generally do not have to exhaust administrative or judicial remedies before pursuing claims under section 1983, in *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court held that where success on the civil rights claim for damages would necessarily imply the invalidity of an underlying criminal conviction, no suit can be brought unless and until the conviction has been reversed or expunged by way of direct appeal or habeas corpus

relief. The Court analogized to the favorable termination requirement for the common law tort of malicious prosecution (512 U.S. at 486), and also found the limitation necessary to avoid undermining federal habeas corpus and exhaustion of state post-conviction remedies as the specific federal remedy to challenge the validity of a conviction (512 U.S. at 483). The latter view was consistent with the Court's decision in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), which barred section 1983 claims for injunctive relief concerning the fact or duration of imprisonment, as habeas corpus is the sole avenue of relief for such claims.

Determining whether or not a successful civil rights claim would "necessarily" implicate the validity of an underlying criminal conviction and thus fall within *Heck*, can be difficult. While claims for malicious prosecution, destruction or withholding of exculpatory evidence leading to conviction necessarily fall within the *Heck* requirement (512 U.S at 479), claims based on law enforcement conduct not directly related to the underlying conviction do not require successful pursuit of state appeals or federal habeas corpus relief prior to filing suit.

For example, the Supreme Court has held that prisoner challenges to the method of execution in death penalty cases do not require reversal of the underlying conviction or successful habeas corpus relief, because success would not invalidate the sentence, but merely alter the manner of carrying it out. *Nelson v. Campbell*, 541 U.S. 637 (2004); *Hill v. McDonough*, 547 U.S. 573 (2006). Similarly, as the Court noted in *Heck* itself, generally, claims of excessive force would survive a *Heck* challenge because in most cases, the act of excessive force itself is not related to the merits of the underlying conviction. *See* 512 U.S. at 487 n.7.

However, there are instances in which *Heck* might apply to an excessive force claim. The most common scenario is where the plaintiff was convicted of resisting arrest or assaulting a police officer. In such cases, the key is whether success on the excessive force claim would *necessarily* imply that the underlying conviction was invalid. This requires close analysis of the facts in a given case. For example, if the excessive force allegedly occurred after the suspect had already been arrested for resisting, then *Heck* will not apply. The force simply has nothing to do with the underlying crime. *See Sanford v. Motts*, 258 F.3d 1117 (9th Cir. 2001).

A similar problem arises when a plaintiff engaged in multiple acts of resistance leading up to the arrest. For example, if plaintiff entered a guilty plea, the factual basis of the plea may not be clear from the record, and the presence of several potential grounds for the plea means that success on a subsequent excessive force claim would not *necessarily* imply the conviction was invalid. *Smith v. City of Hemet*, 394 F.3d 689 (9th Cir. 2005). Or review of the criminal trial transcript may indicate that a jury convicted the plaintiff based on an act of resistance that had not prompted the use of the alleged excessive force. In *Martinez v. City of Albuquerque*, 184 F.3d 1123 (10th Cir. 1999), the defendant police officers were attempting to arrest the plaintiff for various crimes other than resisting arrest when he fled. The officers pursued him and, according to plaintiff, eventually used excessive force in apprehending him. Although the plaintiff was acquitted of the criminal charges that had originally spawned the pursuit, nonetheless he was found guilty of resisting arrest. The district court dismissed his excessive force claim against the City and officers, concluding that it was barred by *Heck.* The Tenth Circuit reversed, noting that the findings in the state court criminal trial indicated that the plaintiff had been convicted based on his conduct in fleeing his pursuers,

and not based on any action he took in physically resisting the officers during the altercation. As a result, a successful § 1983 claim would not imply the invalidity of the underlying criminal conviction.

Similarly, the underlying criminal conviction might not have required the jury to assess the level of force employed by the officers. In *Nelson v. Jashurek*, 109 F.3d 142 (3d Cir. 1997), the plaintiff had been convicted of resisting arrest in state court, but brought an excessive force claim against the arresting officer. The district court granted summary judgment based on *Heck* because the state court criminal jury had been instructed that if it determined the officer was not justified in using "substantial force," then it could not convict the plaintiff. The Tenth Circuit reversed, noting that the fact that the jury in the state court criminal trial found that the officer "was justified in using 'substantial force' to arrest [the plaintiff] does not mean that he was justified in using an *excessive* amount of force and thus does not mean that his actions in effectuating the arrest necessarily were objectively reasonable." 109 F.3d at 145 (emphasis added). The court therefore concluded that a finding that the officer used excessive "substantial force" would not necessarily imply that the conviction was unlawful and thus *Heck* was inapplicable. *See also Willingham v. Loughnan*, 261 F.3d 1178, 1183 (11th Cir. 2001) (*Heck* inapplicable even though plaintiff convicted of attempted murder of police officer: "[A]fter thorough review of the criminal-trial transcript provided to us, we conclude that whether the Officer Defendants' acts were reasonable under the circumstances was not necessarily determined by the criminal trial jury").

Claims for warrantless arrest or unlawful seizure of evidence often fall outside of *Heck*, because success on such claims does not necessarily imply that the underlying criminal conviction was invalid. In *Wallace v Kato*, 549 U.S. 384 (2007), the Supreme Court found that *Heck* did not bar the plaintiff from asserting

a claim for an unlawful warrantless arrest under the Fourth Amendment and did not delay accrual of a cause of action based on that claim, even if the plaintiff was subsequently convicted of the crime for which he was arrested. The Court noted that the validity of the underlying conviction in no way impacted the question of whether the warrantless arrest was justified. 549 U.S. at 389. *See also Mills v. City of Covina*, 921 F.3d 1161, 1167 (9th Cir. 2019) (*Heck* did not bar plaintiff from pursuing pre-conviction claims for unlawful stop and detention, false arrest and false imprisonment); *Weilburg v. Shapiro*, 488 F.3d 1202, 1206 (9th Cir. 2007) (*Heck* does not bar action based on unlawful extradition because successful claim would not invalidate conviction).

There is a significant open question as to whether *Heck* applies to a suit by a prisoner who is no longer in custody. In *Heck*, the plaintiff was still in custody at the time he filed his civil suit challenging the basis of his conviction, and as noted, the court analogized to the tort of malicious prosecution which required that the underlying action have terminated in the plaintiff's favor before allowing a claim to proceed. 512 U.S. at 484-85.

However, in a concurring opinion, Justice Souter, joined by Justices Blackmun, Stevens and O'Connor, emphasized that allowing civil suits by a prisoner in custody would be inconsistent with Congress's enactment of the habeas corpus statute as the means for providing federal review of a state conviction Justice Souter noted, however, that where habeas relief might be unavailable, say for example, where someone was simply improperly fined, it would make little sense to deny the claimant a section 1983 remedy. 512 U.S. at 502-03.

In *Spencer v. Kemna*, 523 U.S. 1 (1998), Justice Souter, joined by Justices O'Connor, Ginsburg and Breyer, concurred in the opinion of the Court finding that a criminal defendant's petition for writ of habeas corpus was moot, because he had

served the entirety of his sentence, but wrote separately to emphasize that the convicted defendant need not secure habeas relief at this juncture in order to preserve a claim for damages under section 1983. Citing his concurring opinion in *Heck*, Justice Souter explained that *Heck* would not bar a section 1983 claim by a prisoner who is no longer in custody and for whom habeas corpus relief was unavailable. *Id.* at 19-21.

The Supreme Court has expressly noted that it is an open issue whether *Heck* bars a section 1983 claim by a plaintiff for whom habeas corpus was unavailable as a remedy. *Muhammad v. Close*, 540 U.S. 749, 752 n.2 (2004). There is currently a circuit split on the issue. The Fourth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits have all recognized an exception to the *Heck* bar based on Justice Souter's concurring opinion in *Spencer* and allow section 1983 claims to proceed where the plaintiff, through no fault of his or her own, was unable to seek habeas corpus relief. *See*, *e.g.*, *Wilson v. Johnson*, 535 F.3d 262, 266-68 (4th Cir. 2008); *Powers v. Hamilton Cnty. Public Defender Comm'n*, 501 F.3d 592, 603 (6th Cir. 2007); *Harden v. Pataki*, 320 F.3d 1289, 1298-99 (11th Cir. 2003); *Nonnette v. Small*, 316 F.3d 872, 876-77 (9th Cir. 2002); *Carr v. O'Leary*, 167 F.3d 1124, 1127 (7th Cir. 1999); *Cohen v. Longshore*, 621 F.3d 1311, 1317 (10th Cir. 2010). In contrast, the First, Third, Fifth and Eighth Circuits have held that the *Heck* favorable termination requirement prevents a section 1983 claim for damages even when brought by plaintiffs whose release from custody has made habeas relief unavailable. *See*, *e.g.*, *Figueroa v. Rivera*, 147 F.3d 77, 81 n.3 (1st Cir. 1998); *Williams v. Consovoy*, 453 F.3d 173, 177-78 (3d Cir. 2006); *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007).