No. 17-17144

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LORI RODRIGUEZ, et al.,

Plaintiffs-Appellants,

v.

CITY OF SAN JOSE, et al.

Defendants-Appellees.

Appeal from the United States District Court
for the District of California, Northern Division

Case Number: 5:15-cv-03698-EJD

SUPPLEMENTAL BRIEF OF CITY OF SAN JOSE, SAN JOSE POLICE DEPARTMENT, & OFFICER STEVE VALENTINE

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Introduction

The *Rooker-Feldman* doctrine prohibits a party from appealing a state-court judgment in federal district court. The prohibition extends to de facto appeals where the relief the federal plaintiff seeks would necessarily have the effect of undoing the state-court judgment. The question presented is whether *Rooker-Feldman* precludes Rodriguez's lawsuit here. The answer is yes.

Plaintiff Rodriguez instituted this federal lawsuit seeking return of several firearms. The only reason Rodriguez does not have those firearms is that a California state court authorized their seizure and ordered the City of San Jose to withhold them from her. Rodriguez believes the California court's order was wrong and violated her constitutional rights. But the only method federal law gives her to challenge that order is to exhaust state judicial remedies and seek Supreme Court review. Rodriguez has instead requested a federal district-court order that directly contradicts the California court's judgment. To issue it would entail a federal court telling the City to do what the state court has prohibited. Rodriguez thus attempts exactly what *Rooker-Feldman* prohibits: she invokes federal jurisdiction to collaterally attack and undo a state-court judgment. This Court should dismiss her case for lack of jurisdiction.

The doctrines of issue and claim preclusion also bar Rodriguez's challenge. Rodriguez either did or should have raised all the claims in her federal lawsuit

before the state court. California res judicata principles accordingly prohibit her from relitigating her claims here.

Finally, the presence of organizational plaintiffs in the case does not affect the district court's lack of jurisdiction or the preclusive effect of the state court's final decision. To the extent the organizational plaintiffs have Article III standing, it is only derivatively through Rodriguez. Their claims and the relief they request thus likewise seek to undo the state-court judgment against Rodriguez. And because Rodriguez adequately represented their identical interests in the state-court proceeding, res judicata principles bar the organizations' federal claims to the same extent. Their intervention in the case cannot create federal jurisdiction or defeat principles of res judicata.

Argument

a. The *Rooker-Feldman* doctrine bars Rodriguez's federal lawsuit

Federal courts may exercise jurisdiction over a case only when a statute specifically grants it. *See Kontrick v. Ryan*, 540 U.S. 443, 452 (2004). No statute provides for federal district (or circuit) court jurisdiction to hear appeals from state-court decisions. *See Noel v. Hall*, 341 F.3d 1148, 1154–55 (9th Cir. 2003). The *Rooker-Feldman* doctrine[1] applies this jurisdictional principle. With exceptions not relevant here, the doctrine prohibits federal district-court

[1] Named after *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

jurisdiction over cases in which a plaintiff seeks to appeal from or collaterally attack a state-court judgment. *See Noel*, 341 F.3d at 1154.

This prohibition extends not only to an action "explicitly styled as a direct appeal, but also over the 'de facto equivalent' of such an appeal." *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). A lawsuit is a de facto appeal from a state-court decision when the federal plaintiff "complain[s] of a legal injury caused by a state court judgment" and seeks relief from that judgment. *See Noel*, 341 F.3d at 1163.

The Court can determine whether a federal lawsuit represents a de facto appeal from a state-court judgment by looking at the relief the federal plaintiff seeks. *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) ("[U]nder *Rooker-Feldman*, we must pay close attention to the *relief* sought by the federal-court plaintiff."). If the federal court "cannot grant the relief [sought] without undoing the decision of the state court," the federal case is an impermissible collateral attack "clearly barred under *Rooker-Feldman*." *Id.* (internal quotations omitted).

Rodriguez's lawsuit represents just such an impermissible de facto appeal. The City took and retained weapons from Rodriguez's home under the process outlined in California Health and Welfare Code Section 8102. (ER 9.) Rodriguez believes the City erred in invoking § 8102 to collect the weapons, and she argued her position in the § 8102 proceeding before the California superior court. She

lost. (ER 6.) The state court determined that § 8102 authorized seizure of the firearms and prohibited their return under the circumstances. The court accordingly ordered the City to retain them. The state's appellate court affirmed, holding that the superior court's order correctly and constitutionally applied § 8102. (ER 83–100.)

Rodriguez disagrees with the California courts and now seeks to undo the outcome of the state proceedings. But instead of exhausting state judicial remedies and seeking review in the United States Supreme Court, she has filed a new lawsuit in federal district court. In the words of her complaint, Rodriguez's suit is a constitutional "challenge to the [practice of] seizing and retaining firearms" according to the process of § 8102. (ER 15.) But Rodriguez does not challenge the practice of "seizing and retaining" firearms under § 8102 generally. She challenges the seizure and retention of firearms in *her individual case*—conduct that the California courts authorized and ordered based on their application of § 8102. This is clear from the relief she seeks: an order requiring the City to return the weapons to her (and to award damages for the deprivation) notwithstanding the state court's contrary order. (ER 24.)

The *Rooker-Feldman* doctrine bars Rodriguez's suit. As the "state-court loser[]," Rodriguez now asks for the relief that would nullify the California court's order. *Cooper*, 704 F.3d at 778. The success of Rodriguez's suit is contingent wholly on the determination that the state courts were wrong in ordering the

weapons withheld under the circumstances. *See Cooper*, 704 F.3d at 782 (holding that *Rooker-Feldman* barred suit where it would "succeed[] only to the extent that the state court wrongly decided the issues before it"). There is no way for a federal court to grant the relief she seeks—an order to return the firearms and pay damages for not doing so before—without "effectively revers[ing and voiding] the [California] court decision." *Id.* at 779; *cf. Bianchi*, 334 F.3d at 902 ("It is difficult to imagine what remedy the district court could award in this case that would not eviscerate the state court's judgment."). Rodriguez's case is thus an impermissible de facto appeal from the state court's judgment. *See id.*

Rodriguez's suit differs from the cases in which this Court has held the *Rooker-Feldman* doctrine inapplicable because the federal plaintiff's claim was directed at an "allegedly illegal act or omission by an adverse party" that did not derive from a state-court judgment. *See Noel*, 341 F.3d at 1164. Rodriguez does not allege that the California-court judgment requiring retention of the weapons was obtained by fraud or other conduct extrinsic to the state-court order. *Cf. Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140–41 (9th Cir. 2004). Nor does she bring a facial constitutional attack against the California law on which the state court's order was based. *Cf. Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013); *Maldonado v. Harris*, 370 F.3d 945, 950 (9th Cir. 2004); *see also Bianchi*, 334 F.3d at 901 ("It is immaterial that [Rodriguez] frames [her] federal complaint as a constitutional challenge . . . rather than as a direct appeal of" the state courts'

decisions because "*Rooker–Feldman* bars federal adjudication of any suit in which a plaintiff alleges an injury based on a state court judgment and seeks relief from that judgment . . . .") (internal quotations and citations omitted).[1]

Rather, the injury Rodriguez claims arises entirely from the California superior court's ruling that § 8102 authorized the removal and retention weapons based on the findings the court made in her particular case. *See Cooper*, 704 F.3d at 782 (applying *Rooker-Feldman* bar to constitutional claims, "no matter what label" the plaintiff assigned them, since they would succeed "only to the extent that the state court" order was wrong). In the absence of the state-court order and the conduct it authorized, there would be no action by the City or its officials for Rodriguez to challenge. *Cf. id.* Her federal case is manifestly an attack on the California court's § 8102 order, not anything the City has done independent of that order.

[1] Among Rodriguez's arguments is that the City violated due process by acting inconsistently with the California appellate court's decision in her § 8102 matter. (Opening Brief, pp. 31–33.) For the reasons outlined in the City's Answer Brief, this fundamentally misconceives the import of the appellate decision and Penal Code Section 33800 et seq. (Answering Brief, pp. 57–60.) In any event, while Rodriguez may style the argument as an attack on the City's actions rather than the state-court judgment, it is in reality merely alternative method of seeking the same prohibited relief: a federal court order nullifying the California court's judgment. To the extent Rodriguez believes the state appellate court's opinion modified the state-court order, she is free to press that claim on the California court that issued the order. What she may not do is invoke federal jurisdiction to invalidate the state proceeding altogether. *See Bianchi*, 334 F.3d at 902.

In sum, the district court lacked jurisdiction over Rodriguez's de facto appeal from the state-court judgment against her. If *Rooker-Feldman* means anything, it is that a federal court may not issue an order that would directly nullify the order of a state court on behalf of the person who lost before that tribunal. *See Bianchi*, 334 F.3d at 899. Rodriguez's case asks for precisely such an order. *Rooker-Feldman* thus bars her suit. The City respectfully requests that this Court so hold.

b. Res judicata principles preclude Rodriguez's federal claims

Section 1738 of United State Code Title 28 requires federal courts to give "full faith and credit" to the judgments of state courts. *See Noel*, 341 F.3d at 1166. State law determines the extent to which federal courts give preclusive effect to state-court judgments. *See id.* The Court accordingly looks to California law here to determine whether res judicata principles preclude Rodriguez's claims.

Under California law, res judicata "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 896 (Cal. 2002). "Claim preclusion, the primary aspect of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties." *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 824 (Cal. 2015) (internal quotations omitted). "If claim preclusion is established, it operates to bar relitigation of the claim altogether." *Id.*

The doctrine of res judicata applies both to affirmative claims and to defenses a party could have raised in a prior action involving the same cause of action. *State Bd. of Equalization v. Superior Court*, 39 Cal. 3d 633, 641 (Cal. 1985) ("Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.") (citing *Brown v. Felsen*, 442 U.S. 127, 131 (1979)); *see also Maldonado*, 370 F.3d 945 at 953 (considering argument of claim preclusion against party who failed to raise several defenses in an earlier nuisance suit, but declining to apply the doctrine given that the federal case did not involve the same primary right); *Balg v. Steel*, 2009 WL 10696442 (N.D. Cal. 2009) (holding that federal plaintiff's claims were barred by res judicata because he failed to raise several defenses in an earlier unlawful detainer action that involved the same "nucleus of facts" as the new federal case).

"California's res judicata doctrine is based upon the primary right theory." *Mycogen Corp.*, 28 Cal. 4th at 904. Under that theory, claim preclusion prevents a plaintiff from bringing any claim against a defendant based on the same "injury" that formed the basis for a claim or defense against that same defendant in a prior suit. *See id*. Regardless of the legal theories the plaintiff advances for relief, the relevant injury constitutes a single, indivisible "cause of action." *See id.* Res judicata bars the attempt to obtain relief for the same injury in a subsequent case, and it does not matter that the plaintiff splits the single cause of action into

multiple claims predicated on different theories. *See id.* (observing that "[e]ven where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief").

Here, the injury Rodriguez claims in her federal complaint is that the City improperly took and retained weapons from her home pursuant to § 8102. (ER 15–21.) That is the exact same injury Rodriguez claimed against the City and litigated in the § 8102 proceeding itself. Her theory there was that § 8102 did not permit the taking and withholding of the weapons, and that a contrary order would violate the Second Amendment. Her theory has since expanded to encompass additional constitutional principles, but her alleged injury—and thus cause of action—remains the same. So does the relief she seeks. As before, Rodriguez asks for a court order requiring the weapons to be returned to her home. The "primary right" at issue in Rodriguez's case is the alleged right to have the weapons in the City's possession returned to her, and Rodriguez has already litigated that primary right. *See Mycogen Corp.*, 28 Cal. 4th at 904.

Res judicata thus precludes Rodriguez's federal claims. The "one injury" Rodriguez alleges—the City's § 8102 collection and retention of weapons—gave "rise to only one claim for relief." *See id*. Rodriguez had the opportunity to request relief for the alleged injury, and to assert any theory for why she was entitled to that relief, in the § 8102 proceeding state law afforded her. Having considered Rodriguez's arguments (including her single constitutional argument) for why the

weapons should be returned to her, the California court denied her claim on the merits in a final judgment. Regardless of the particular theories or arguments she now advances, Rodriguez may not relitigate that claim in this forum. *See id.*; *see also* 28 U.S.C. § 1738.[1]

c. The institutional plaintiffs' presence does not cure the district court's lack of jurisdiction or the preclusive effect of the state-court judgment on Rodriguez's claims

The intervention of the Second Amendment Foundation, Inc. and Calguns Foundation, Inc. (the "Organizations") as associational plaintiffs in this case cannot provide the district court jurisdiction to do what *Rooker-Feldman* prohibits, namely, to undo the state court's § 8102 order. *See Bianchi*, 334 F.3d at 902.

The Organizations have Article III standing only to the degree that (among other requirements) their "members would otherwise have standing to sue in their own right." *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). To sue "in their own right," the Organizations' members would have to demonstrate a "direct injury" as a result of the City's actions. *See Associated Gen. Contractors of California, Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1406 (9th Cir. 1991). A "remote" or "hypothetical threat" of some deprivation "is not

[1] Additionally, the doctrine of collateral estoppel, or issue preclusion, serves as a separate bar to Rodriguez's Second Amendment argument inasmuch as the same parties fully litigated that issue in the state-court proceedings. *See McCutchen v. City of Montclair*, 73 Cal. App. 4th 1138, 1144 (Cal. Ct. App. 1999) (holding that a party is collaterally estopped from litigating an issue that the party fully and fairly litigated in a prior proceeding).

enough." *See id.* Rather, the alleged injury must be particularized and imminent. *See id.*

The Organizations as such have suffered no cognizable injury on account of the City's actions in this case. They do not claim that the City has harmed them, and they do not claim that the City has harmed any of their members *except for* plaintiff Rodriguez. Thus, to the extent they have standing in the case at all, it is *only* by virtue of the alleged injury that the City's compliance with the state court's § 8102 order has inflicted on Rodriguez. Article III does not permit them standing beyond that. *See Local 186, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Brock*, 812 F.2d 1235, 1238 (9th Cir. 1987) (organization lacked standing because it could not show that any member had suffered a direct injury).[1]

By the same token, the relief the Organizations seek is (and must constitutionally be) substantively identical to the relief Rodriguez seeks. The Organizations request an order from the district court prohibiting the City from engaging in "future violations" of their members' rights. (ER 22–24.) But in the

[1] The Organizations argue that they have standing on account of the time and money they expend to vindicate the rights of gun owners and educate them about the same. The Organizations confuse the inquiry. While the expenditure of organizational resources might inform the second prong of the standing test—whether "the interests [the organization] seeks to protect are germane to [its] purpose—it has no bearing on the first—whether any of the Organizations' members would have standing to sue the City in their own right. *See Associated Gen. Contractors of California, Inc.*, 950 F.3d at 1406; *Brock*, 812 F.2d at 1238.

context of the complaint, the only non-hypothetical "future violations" the Organizations could be referencing would be City compliance with state-court judgments ordering the withholding of firearms under § 8102 in the same circumstances as in Rodriguez's case.

In other words, the only distinction between the relief the Organizations and Rodriguez seek is that while Rodriguez's requested relief would nullify the state court's § 8102 order retrospectively, the Organizations' requested relief would nullify identical state-court orders prospectively. And just as with Rodriguez's request, the relief the Organizations request would be appropriate only to the extent that the California state-court judgment was wrong in authorizing the seizure and retention of firearms in Rodriguez's § 8102 case. *See Cooper*, 704 F.3d at 782. Because the Organization's claims and arguments are all derivative of Rodriguez's, and are equally contingent on the finding that the state court erred in issuing its § 8102 order, the *Rooker-Feldman* doctrine operates to bar their claims to the same degree it bars Rodriguez's. *See id.*

The wholly vicarious nature of the Organizations' standing and federal claim distinguishes this case from precedents in which *Rooker-Feldman* did not apply because the plaintiffs in the federal action were legal strangers to the parties in state-court proceedings. *Cf. Johnson v. DeGrandy*, 512 U.S. 997, 1006 (1994); *Bennett v. Yoshina*, 140 F.3d 1218, 1223–24 (9th Cir. 1998). In those cases, the federal plaintiffs claimed (and based standing on) injuries that were independent

of the party to the state-court action. *See Johnson*, 512 U.S. at 1006 (United States government prosecuting a federal statute after unrelated parties litigated the statute in state court); *Bennett*, 140 F.3d at 1223 (new organizational plaintiffs alleging constitutional violations on behalf of injured members who were not parties to the underlying state-court proceeding).

The Organizations likewise cannot escape the preclusive effect of the final state-court judgment against Rodriguez under principles of res judicata. Under California law, claim preclusion applies both to the parties who litigated in the prior action and to those in privity with them. *See Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1069–70 (Cal. Ct. App. 1998). "Privity" for res judicata purposes does not depend on a formal legal relationship. *See id.* It exists whenever one party's "interests are so similar to [a party's in a previous action] that the latter was the former's virtual representative in the earlier action." *Id.* at 1070.

The Organizations are in privity with Rodriguez for res judicata purposes. Their interests in the state-court proceeding were not only similar to Rodriguez's, they were identical. *See id.* at 1069–70. They desired the same outcome, relied on the same set of facts, and were represented by the same attorney. And most importantly, the Organizations' federal claim derives entirely from Rodriguez's alleged injury. It is well within the parameters of due process for the Organizations to be bound by the state-court judgment their attorney litigated. *See California*

Physicians' Serv. v. Aoki Diabetes Research Inst., 163 Cal. App. 4th 1506, 1522 (Cal. Ct. App. 2008) (noting the broad due-process contours of res judicata in finding privity between insurance company and state retirement fund because the interests of the two were sufficiently close in earlier litigation).

At least one district court in California has interpreted state law to find privity between a public interest group and the individual members it represents. *See Thomas v. Hous. Auth. of The Cty. of Los Angeles*, 2005 WL 6136432, at *13 (C.D. Cal. 2005). The relevant facts of the case largely parallel those here, and the court's reasoning is persuasive:

> [The] FHF's claim is wholly derivative of the individual plaintiffs' claim. FHF does not allege that any of defendants' actions harmed it directly. Rather, it asserts that defendants' [conduct] caused FHF to divert time and resources to assist the individual plaintiffs in combating [that conduct]. FHF's claim is thus inextricably linked to, and dependent on, the individual plaintiffs' claim . . . Because FHF's claims arise solely from the alleged injury suffered by the individual plaintiffs, and because, through its attorney, it controlled the [prior state] action, there is a sufficient identity of interest to warrant the application of collateral estoppel to FHF's claims.

Id.

Because the Organizations are in privity with Rodriguez, and because the § 8102 proceeding resulted in a final judgment on the merits regarding the same general cause of action, res judicata bars the Organizations' claims here to the same degree that it bars Rodriguez's. *See DKN Holdings LLC*, 51 Cal. 4th at 824 (stating requirements for claim preclusion).

Conclusion

Both the *Rooker-Feldman* doctrine and res judicata bar the plaintiffs' claims in this case. The City respectfully requests that this Court so hold.

Respectfully submitted,

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Dated: January 7, 2019

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