

ARTICLE

Reign of Error

District Courts Misreading the Supreme Court over *Rooker–Feldman* Analysis

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I. Introduction

The *Rooker–Feldman* doctrine, named after two Supreme Court cases from 1923 and 1983,¹ posits that the Supreme Court is the only federal court that can exercise appellate review of state-court decisions. Federal district courts and courts of appeals are not to do what amounts to reviewing state courts' judgments.² In 2005, the Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*³ articulated a set of stringent criteria for federal courts to follow in deciding whether a case encounters a *Rooker–Feldman* bar. But since the Court's decision a year later in *Lance v. Dennis*,⁴ a significant minority of district courts have taken lower-court language quoted but disapproved in *Lance* as the starting point for *Rooker–Feldman* analysis. We have found eighteen decisions in nine districts from 2006 through mid-2020 that take this demonstrably misgrounded approach.

This essay examines the Supreme Court's recent precedents establishing the contours of the *Rooker–Feldman* doctrine, including the

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¹ *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

² Federal habeas corpus for state prisoners is a statutorily authorized exception. See 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 133.33[1][d], at 133-60.6 (3d ed. 2020).

³ 544 U.S. 280 (2005).

⁴ 546 U.S. 459 (2006) (per curiam).

Lance decision,⁵ and the scope and possible effects of the lower courts' misreading of *Lance*.⁶ The essay then explores what can be no less important for practicing lawyers, judges, and law clerks than the jurisprudence—possible deficiencies in research methods and in the drafting of the per curiam *Lance* opinion that might have contributed to the recurring error.⁷

II. Background: *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* and *Lance v. Dennis*

After disparate and sometimes expansive lower-court treatments of the *Rooker–Feldman* doctrine, the Supreme Court's unanimous 2005 decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* articulated a narrow set of conditions in which the doctrine bars lower-court subject-matter jurisdiction. The doctrine “is confined to . . . 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.”⁸

The following year in *Lance*, the Court summarily vacated a three-judge district-court decision by the U.S. District Court for the District of Colorado that had found a *Rooker–Feldman* bar based on its view that the doctrine applied when applicable preclusion law could bind prior nonparties, regarded as being in privity, to an adverse prior state-court decision. The Supreme Court stated that the lower court had “erroneously conflated preclusion law with *Rooker–Feldman* . . . [,] [which] is not simply preclusion by another name.”⁹

⁵ See *infra* part II.

⁶ See *infra* parts III, IV.

⁷ See *infra* part V.

⁸ 544 U.S. at 284. Some lower courts have distilled from *Exxon Mobil's* formulation a list of four requirements for the application of *Rooker–Feldman*. See *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (“Breaking down the holding of *Exxon Mobil*, we conclude that there are four requirements that must be met for the *Rooker–Feldman* doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments.” (internal quotation marks and brackets omitted)); *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005) (“From [*Exxon Mobil's*] holding, we can see that there are four requirements for the application of *Rooker–Feldman*. First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must complain of injuries caused by a state-court judgment. Third, the plaintiff must invite district court review and rejection of that judgment. Fourth, the state-court judgment must have been rendered before the district court proceedings commenced—i.e., *Rooker–Feldman* has no application to federal-court suits proceeding in parallel with ongoing state-court litigation. The first and fourth of these requirements may be loosely termed procedural; the second and third may be termed substantive.” (internal quotation marks, brackets, and footnote omitted)).

⁹ 546 U.S. at 466.

Before repeating its approach from *Exxon Mobil*, quoted above, the *Lance* Court had described the proceedings below, including quotations of the district court’s statement of requirements for *Rooker–Feldman* to apply. This was the passage that, though simply part of the *Lance* Court’s procedural history, several lower courts have taken as the Court’s authoritative statement of the criteria for applying the doctrine:

(1) “[T]he party against whom the doctrine is invoked must have actually been a party to the prior state-court judgment or have been in privity with such a party”; (2) “the claim raised in the federal suit must have been actually raised or inextricably intertwined with the state-court judgment”; and (3) “the federal claim must not be parallel to the state-court claim.”¹⁰

There is much overlap between the *Lance* district court’s formulation and the Supreme Court’s in *Exxon Mobil*, but also notable differences. Most prominently, the court below in *Lance* included, and acted in reliance on, the privity language in its first criterion, which is missing from the *Exxon Mobil* articulation and is the point on which the *Lance* Court vacated the lower court’s decision. The “actually . . . a party” phrasing in *Lance* partly coincides with the Supreme Court’s narrower “state-court losers” terminology. *Exxon Mobil*’s limiting factor about “complaining of injuries caused by state-court judgments” is absent from the *Lance* criteria as stated by the district court but is perhaps implicit in “the claim raised in the federal suit must have been actually raised” in the state-court litigation. The “inextricably intertwined” alternative in the *Lance* district court’s second criterion is absent from the *Exxon Mobil* Court’s statement. The *Exxon Mobil* Court’s “inviting district court review and rejection” language is missing from the *Lance* district court’s formulation—although that factor may be implicit in the district court’s understanding. Finally, “must not be parallel” is just an alternative way of referring to “state-court judgments rendered before the district court proceedings commenced.”

III. Erroneous District-Court Reliance on the Requirements from the Vacated Lower-Court Opinion

We have found nineteen district-court decisions that quote, in whole or in large part, or paraphrase the recount of the Colorado district court’s statement of *Rooker–Feldman* analysis from the Supreme Court’s *Lance* opinion. Remarkably, all but one of the nineteen quote or paraphrase the

¹⁰ *Id.* at 462 (quoting *Lance v. Davidson*, 379 F. Supp. 2d 1117, 1124 (D. Colo. 2005)).

Court's description accurately but fail to note that this is not what the Supreme Court is saying to do.¹¹

Fortunately, the great majority of lower federal courts do not fall into the error of following the Colorado district court's statement of *Rooker–Feldman* analysis that got its decision vacated.¹² Still, it is surprising how many have done so. Also, except in one instance,¹³ the slip-up does not appear to have led to erroneous applications of the doctrine, at least not yet. Four D.C. District decisions, for example—*Bradley v. DeWine*,¹⁴ *Terry v. First Merit National Bank*,¹⁵ *Terry v. DeWine*,¹⁶ and *Jung v. Bank of America, N.A.*¹⁷—involved a situation common in *Rooker–Feldman* litigation: a mortgagor who lost in state-court foreclosure proceedings, seeking to have a federal court undo the foreclosure by making claims of federal-law violations in connection with the state-court adjudications. Federal courts regularly and properly shoo away such state-court losers, as did the D.C. District judges in these decisions. Such cases fit the *Exxon Mobil* criteria to a T.

The error of following the *Lance* recitation of the lower court's analysis is widespread. In addition to the four cases described above, we have found it in a fifth case from the D.C. District,¹⁸ we have found

¹¹ The exception is *Commodities Export Co. v. City of Detroit*, No. 09-CV-11060-DT, 2010 WL 2633042, at *10–11 (E.D. Mich. June 29, 2010) (rejecting as frivolous an argument based on quoted language from *Lance*, pointing out that the party making that argument “accurately quotes those certain words from the Court’s opinion in *Lance*, but the cited material comes from the Court’s recitation of the *district court* opinion which the Court then proceeded to vacate”), *aff’d on other grounds sub nom.*, *Commodities Export Co. v. Detroit Int’l Bridge Co.*, 695 F.3d 518 (6th Cir. 2012).

¹² In a recent six-month period, for example, thirty-one decisions from twenty district courts recited and applied the *Exxon Mobil* criteria while citing *Lance* as additional authority for those criteria or related points. During that same period, no decisions made the error of using the *Lance* district court’s criteria. Search performed Apr. 8, 2020, of Westlaw Edge database of U.S. District Court decisions that cited both *Lance* and *Exxon Mobil* during the preceding six months.

¹³ See *Lewis v. L.A. Metro. Transit Auth.*, No. CV 19-1456 PSG, 2019 WL 6448944, at *4–5 (C.D. Cal. Sept. 10, 2019), discussed *infra* at notes 41–43 and accompanying text.

¹⁴ 55 F. Supp. 3d 31, 41–42 (D.D.C. 2014) (Bates, J.).

¹⁵ 75 F. Supp. 3d 499, 508–09 (D.D.C. 2014) (Kollar-Kotelly, J.).

¹⁶ 75 F. Supp. 3d 512, 523–24 (D.D.C. 2014) (Kollar-Kotelly, J.). Professor Rowe has sent letters to all three of the D.C. District judges who decided these four cases from that court, pointing out the error of relying on the district court’s language quoted in the Supreme Court’s *Lance* opinion (assuring them that their results were almost certainly correct!). He has received no replies. However, in a later case involving *Rooker–Feldman* and citing Judge Bates’s *Bradley* decision, *supra* note 14, and her own ruling in *Terry v. DeWine*, Judge Kollar-Kotelly did not cite or quote *Lance*. See *Laverpool v. Taylor Bean & Whitaker REO LLC*, 229 F. Supp. 3d 5, 15–21 (D.D.C. 2017).

¹⁷ No. 18-962, 2018 WL 6680579, at *5 (D.D.C. Dec. 19, 2018) (Contreras, J.), *aff’d per curiam*, No. 19-7049, 2020 U.S. App. LEXIS 1426 (D.C. Cir. Jan. 15, 2020). The authors sought leave to file a brief as *amici curiae* urging the D.C. Circuit to issue a published opinion correcting the district court’s error of relying on the district court’s language quoted in the Supreme Court’s *Lance* opinion, but the court of appeals dismissed as moot the motion for leave and summarily affirmed the district court’s judgment. Quoting *Exxon Mobil*’s formulation but making no mention of *Lance* or the *Lance* district court’s formulation, the D.C. Circuit concluded that the district court had properly determined that *Rooker–Feldman* barred the plaintiff’s claims. See Order at 1–2, *Jung v. Bank of Am. N.A.*, No. 19-7049, 2020 U.S. App. LEXIS 1426, at *3–4 (D.C. Cir. Jan. 15, 2020) (*per curiam*).

¹⁸ *McGary v. Deo Ravindra*, No. 19-3249, 2020 WL 4335613, at *3–4 (D.D.C. July 28, 2020).

it in cases from the Southern District of Alabama;¹⁹ the Northern,²⁰ Central,²¹ and Southern²² Districts of California; the Southern District of Mississippi;²³ the District of New Mexico;²⁴ and the District of Puerto Rico.²⁵ Even the District of Colorado, whose decision was vacated in *Lance*, has on two occasions restated and applied the same criteria (but minus the privity language specifically disapproved in *Lance*) directly after quoting the *Exxon Mobil* formulation.²⁶ The details of the decisions relying on the *Lance* recitation of the Colorado district court's criteria are irrelevant for present purposes. As we read the cases, the several district courts quite likely reached the correct *Rooker–Feldman* result in all instances but one (and in that instance the correct *Rooker–Feldman* result probably would not have changed the ultimate outcome²⁷). Most found a *Rooker–Feldman* bar; four did not. What is important is the error in taking, as what the Supreme Court is prescribing, a set of criteria that the Court has supplanted.

IV. Possible Effects of the Error

If the courts relying on the *Lance* criteria are reaching mostly correct results or outcomes anyway, is there ground for concern about the prolif-

19 *Williams v. Patterson*, No. 12-592-WS-M, 2013 WL 4827932, at *4 (S.D. Ala. Sept. 10, 2013); *Mitchell v. Bentley*, 11-00687-KD-M, 2012 WL 2862265, at *4 (S.D. Ala. Apr. 20, 2012), *report and recommendation adopted*, 2012 WL 2862147 (S.D. Ala. July 11, 2012), *aff'd sub nom.* *Mitchell v. Governor of Ala.*, 500 F. App'x 854 (11th Cir. 2012) (per curiam), *cert. denied*, 569 U.S. 973 (2013).

20 *Roe v. Cal. Dep't of Developmental Servs.*, 16-cv-03745-WHO, 2017 WL 2311303, at *11–12 (N.D. Cal. May 26, 2017).

21 *Lewis v. L.A. Metro. Transit Auth.*, No. CV 19-1456 PSG, 2019 WL 6448944, at *4–5 (C.D. Cal. Sept. 10, 2019); *Robinson v. Mortg. Elec. Registration Sys.*, CV 19-2185 PSG, 2019 WL 2491550, at *6 (C.D. Cal. June 14, 2019); *Richards v. County of Los Angeles*, No. CV 17-0400 PSG, 2017 WL 7410985, at *6 (C.D. Cal. Oct. 20, 2017), *aff'd*, 723 F. App'x 556 (9th Cir. (mem.)), *cert. denied*, 139 S. Ct. 419 (2018).

22 *Coulter v. Murrell*, No. 10-CV-102-IEG, 2010 WL 2985165, at *3 (S.D. Cal. July 27, 2010); *Yeager v. City of San Diego*, No. 05CV2089-BEN, 2007 WL 7032933, at *7 (S.D. Cal. June 1, 2007), *aff'd*, 310 F. App'x 133 (9th Cir. 2009) (mem.), *cert. denied*, 558 U.S. 1013 (2009). The chambers of the two different judges deciding these cases in the same district may have made the same mistake independently; in any event, the later decision does not cite the earlier one.

23 *Rustin v. Rustin (In re Rustin)*, No. 04-50890-NPO, 2011 WL 5443067, at *4 (Bankr. S.D. Miss. Nov. 9, 2011).

24 *Hawks v. Mattox*, No. CIV 09-0436, 2009 WL 10681595, at *2 (D.N.M. Dec. 22, 2009).

25 *Nuñez-Nuñez v. Sanchez-Ramos*, 419 F. Supp. 2d 101, 115 n.8 (D.P.R. 2006).

26 *Avery v. Bd. of Cty. Comm'rs*, No. 17-cv-01016-WJM-KMT, 2017 WL 9615892, at *4–5 (D. Colo. Nov. 20, 2017), *report and recommendation adopted*, 2018 WL 1466241 (D. Colo. Mar. 26, 2018); *Turf Master Indus. v. Bd. of Cty. Comm'rs*, No. 09-cv-00890-MEH-MJW, 2009 WL 2982846, at *5–8 (D. Colo. Sept. 15, 2009). *But cf.* *Martinez v. Ritter*, No. 09-cv-02699-CMA-MEH, 2010 WL 2649951, at *2–3 (D. Colo. June 9, 2010) (restating *Lance* district court's three criteria, without privity language, but then applying *Exxon Mobil* formulation), *report and recommendation adopted*, 2010 WL 2649985 (D. Colo. June 30, 2010).

27 *See Lewis v. L.A. Metro. Transit Auth.*, No. CV 19-1456 PSG, 2019 WL 6448944, at *4–5 (C.D. Cal. Sept. 10, 2019) (applying the *Lance* district court's formulation to conclude that *Rooker–Feldman* barred claims for relief that had been denied by the state court, when proper analysis under *Exxon Mobil* would have required application of claim preclusion to dismiss those claims); *see also infra* notes 41–43 and accompanying text.

eration of a formulation that does not match what the Supreme Court has prescribed?

The overlaps of the Supreme Court's *Exxon Mobil* formulation with that of the *Lance* district court outnumber the differences, which are mostly unimportant.²⁸ But the inclusion of the "inextricably intertwined" concept in the *Lance* district court's second requirement is both significant and potentially troublesome. The phrase was much used in *Rooker–Feldman* litigation in lower federal courts before *Exxon Mobil* and had a foundation in *Feldman* itself,²⁹ but it played no role in the analysis in *Exxon Mobil*. The Court there did use the phrase, but only in describing the *Feldman* opinion and in summarizing the proceedings below. The term does no work as the Court analyzes and decides *Exxon Mobil*.

So the Court has not repudiated the "inextricably intertwined" language but has articulated an approach that makes no mention of it, and it has not used the term in any of its decisions mentioning *Rooker–Feldman* since its description of the lower-court proceedings in *Lance*. While the phrase does keep appearing in some post-*Exxon Mobil* decisions in lower federal courts and in our view may properly play a role in limited circumstances,³⁰ some courts of appeals have concluded that it "has no independent content and serves only as a label for claims that are barred by the *Rooker–Feldman* doctrine."³¹

The Tenth Circuit, which encompasses the *Lance* district court as well as the New Mexico district court that has made the *Lance* error,³² has dispensed with the "inextricably intertwined" language in its *Rooker–Feldman* analysis, doubting that it adds anything useful to the *Exxon Mobil* formulation.³³ The D.C. Circuit, where five district-court decisions making the *Lance* error have been rendered, has yet to deal with the role

²⁸ See *supra* part III.

²⁹ See *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) ("If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state court decision."); *id.* at 487 (some of the federal plaintiffs' "allegations are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny [their] petitions. The District Court, therefore, does not have jurisdiction over these elements of [their] complaints.").

³⁰ See Thomas D. Rowe Jr. & Edward L. Baskauskas, "Inextricably Intertwined" *Explicable at Last? Rooker-Feldman Analysis After the Supreme Court's Exxon Mobil Decision*, 1 *FED. CTS. L. REV.* 367, 377–82 (2006).

³¹ 18 *MOORE'S*, *supra* note 2, § 133.33[2][e][ii], at 133-60.52.

³² See *Hawks v. Mattox*, No. CIV 09-0436, 2009 WL 10681595, at *2 (D.N.M. Dec. 22, 2009).

³³ See *Campbell v. City of Spencer*, 682 F.3d 1278, 1282–83 (10th Cir. 2012) ("What did the words 'inextricably intertwined' add? . . . It is unclear whether a claim could be inextricably intertwined with a judgment other than by being a challenge to the judgment. . . . We think it best to follow the Supreme Court's lead, using the *Exxon Mobil* formulation and not trying to untangle the meaning of *inextricably intertwined*. The essential point is that barred claims are those 'complaining of injuries caused by state-court judgments.' In other words, [for *Rooker–Feldman* to apply,] an element of the claim must be that the state court wrongfully entered its judgment." (citation omitted)).

of “inextricably intertwined” in a reported opinion. In two unreported decisions, it has used “inextricably intertwined” in the *Rooker–Feldman* context without explicitly addressing the role that the term should play in *Rooker–Feldman* analysis after *Exxon Mobil*.³⁴

The views of other circuits on “inextricably intertwined,” including those in which the other district-court cases making the *Lance* error have been decided, vary and do not warrant further discussion here.³⁵ District courts need to check circuit precedent since *Exxon Mobil* and not use “inextricably intertwined” just because it had become a widely used mantra before that decision—and especially not out of reliance on the lower court’s *Lance* criteria.

A further possibility for mischief, we can hope a remote one, is that courts looking to the Supreme Court’s quotation of the *Lance* district court’s formulation and including the privity concept (from the first requirement of that formulation) might fall into the same error—fusing privity preclusion with *Rooker–Feldman*—that led the *Lance* Court to vacate the decision below. Someone in privity with a prior state-court loser might well, of course, lose in a second proceeding, but on substantive preclusion rather than procedural jurisdiction grounds. And the disposition could differ; some courts say that *Rooker–Feldman* dismissals are neither with nor without prejudice but are purely jurisdictional,³⁶ whereas a loss on preclusion grounds would be with prejudice.

The *Lance* district court’s formulation lacks the *Exxon Mobil* Court’s reference to state-court losers “complaining of injuries caused by state-court judgments . . . and inviting district court review and rejection of those judgments” (the second and fourth *Exxon Mobil* requirements listed above).³⁷ In most instances there will be little reason for concern that district courts relying on the lower court’s language will be led astray; after all, most of the cases that have relied on it seem to us still to have gotten their results right. But the Supreme Court’s injury and review-and-rejection factors help focus inquiries. They can also sort out situations involving the likes of injuries suffered from adversaries’ pre-litigation conduct and unremedied in state-court litigation, or harms caused by

³⁴ See *Jarvis v. District of Columbia*, 561 F. App’x 11, 11 (D.C. Cir. 2014) (mem.) (“Appellant’s claims are ‘so “inextricably intertwined” with a state court decision that “the district court is in essence being called upon to review the state court decision.”’ (citing and quoting a pre-*Exxon Mobil* D.C. Circuit decision)); *Rodriguez v. Editor in Chief*, 285 F. App’x 756, 759 (D.C. Cir. 2008) (per curiam) (certain of the federal plaintiff’s “claims challenge decisions by the Virginia state bar and the Virginia courts or are inextricably intertwined with such decisions. To the extent that those decisions were final at the time of the filing of the complaint, the claims are barred by the *Rooker–Feldman* doctrine.”).

³⁵ See generally 18 MOORE’S, *supra* note 2, § 133.33[2][e][ii], at 133-60.52 to .52(2).

³⁶ See *id.* § 133.33[2][f], at 133-60.52(12).

³⁷ *Exxon Mobil Corp. v. Saudi Basic Indus.*, 544 U.S. 280, 284 (2005).

illegal actions in efforts to collect on state-court judgments.³⁸ In such cases, *Rooker–Feldman* does not bar federal jurisdiction over matters already litigated in state courts, unless the federal plaintiffs complain of injuries caused by the state-court judgments or invite district-court review and rejection of those judgments.³⁹

Because these elements are missing from the *Lance* district court’s formulation, a mechanical application of that formulation can lead to an incorrect *Rooker–Feldman* result in a case in which the plaintiff seeks a judgment that would be inconsistent with a state-court judgment but does not seek to modify or set aside that judgment.⁴⁰ (Again, the federal plaintiff might lose because of preclusion from the state-court judgment; but as the Supreme Court made clear in *Lance*, that is a separate issue.) This is what happened in *Lewis v. L.A. Metropolitan Transit Authority*.⁴¹ After the state court dismissed the plaintiff’s claims with prejudice, he brought essentially the same claims in a federal suit. The claimed injury arose from the defendant’s pre-litigation conduct and not from the state court’s judgment, which simply left that conduct unpunished. The district court applied the *Lance* district court’s formulation to conclude that *Rooker–Feldman* barred federal jurisdiction.⁴² But under *Exxon Mobil*, this was error; the district court should instead have analyzed the plaintiff’s claims under the rubric of claim preclusion.⁴³

The third criterion from the vacated *Lance* district-court opinion quoted in the Supreme Court’s summary vacatur is not problematic. The requirement that “the federal claim must not be parallel to the state-court claim” tracks *Exxon Mobil*’s third factor, that the state-court

38 See generally 18 MOORE’s, *supra* note 2, § 133.33[2][d][ii], at 133-60.28 to .38.

39 *Exxon Mobil*, 544 U.S. at 293 (*Rooker–Feldman* does not “stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion” (internal quotation marks, brackets, and ellipsis omitted)); see *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 88 (2d Cir. 2005) (“[A] federal suit complains of injury from a state-court judgment, even if it appears to complain only of a third party’s actions, when the third party’s actions are produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it.”).

40 See, e.g., *Mayotte v. U.S. Bank Nat’l Ass’n*, 880 F.3d 1169, 1173–76 (10th Cir. 2018) (no *Rooker–Feldman* bar, because federal suit sought damages for defendants’ conduct predating state-court orders entered pursuant to state’s nonjudicial-foreclosure procedure: “Plaintiff is not seeking to set aside either order. Her claims are based on events predating the [state nonjudicial-foreclosure] proceedings. She could certainly obtain damages from the defendants without setting aside the foreclosure sale. . . . [I]nconsistent judgments are the province of preclusion doctrine. . . .”).

41 No. CV 19-1456 PSG, 2019 WL 6448944 (C.D. Cal. Sept. 10, 2019).

42 *Id.* at *4–5.

43 *Exxon Mobil*, 544 U.S. at 293; see also *Mayotte*, 880 F.3d at 1174–75 (“What is prohibited under *Rooker–Feldman* is a federal action that tries to *modify or set aside* a state-court judgment because the state proceedings should not have led to that judgment. Seeking relief that is *inconsistent* with the state-court judgment is a different matter, which is the province of preclusion doctrine.” (citation omitted)).

judgment must have been “rendered before the district court proceedings commenced.”⁴⁴ Fine, and maybe no harm no foul, but there seems little point in phrasing the concept differently from what the Supreme Court has prescribed. As Professor Rowe used to tell his law students, “If the Supreme Court gives you a recipe, cook with it.”

V. Why Does This Keep Happening?

A. Multiple Independent Occurrences

The error of following the *Lance* district court’s formulation appears to have arisen independently in each court that has made the error. The cases come early and late, with the one from the District of Puerto Rico decided in the same year as *Lance* and the latest one from the D.C. District handed down in 2020.⁴⁵ The courts do not cite a source other than *Lance* itself and various other *Rooker–Feldman* cases that do not make the error; three of the decisions, one of those from the Central District of California, the one from the Northern District of California, and the one from the District of Puerto Rico, do not even cite the Supreme Court’s leading *Exxon Mobil* opinion, relying solely on its summary follow-on in *Lance* and giving only the criteria from the lower-court decision that the Supreme Court vacated.⁴⁶ We have found no separate common origin for the mistake such as a misstatement in a treatise or article.⁴⁷

The different district courts do not cite each other, although the two most recent opinions of the U.S. District Court for the District of Columbia cite an earlier decision of that court from a different judge.⁴⁸ The five decisions in that district are from four different judges; maybe the

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⁴⁴ *Exxon Mobil*, 544 U.S. at 284.

⁴⁵ See *McGary v. Deo Ravindra*, No. 19-3249, 2020 WL 4335613, at *3–4 (D.D.C. July 28, 2020).

⁴⁶ See *Richards v. Cty. of L.A.*, No. CV 17-0400 PSG, 2017 WL 7410985, at *6 (C.D. Cal. Oct. 20, 2017), *aff’d*, 723 F. App’x 556 (9th Cir.) (mem.), *cert. denied*, 139 S. Ct. 419 (2018); *Roe v. Cal. Dep’t of Developmental Servs.*, 16-cv-03745-WHO, 2017 WL 2311303, at *11–12 (N.D. Cal. May 26, 2017); *Núñez-Núñez*, 419 F. Supp. 2d at 115 n.8. Curiously, one opinion from the Southern District of Alabama recites and then applies the *Lance* district court’s formulation point by point, while asserting in a footnote that “we will apply the *Rooker–Feldman* doctrine as interpreted by *Exxon*.” See *Williams v. Patterson*, No. 12-592-WS-M, 2013 WL 4827932, at *4, n.8 (S.D. Ala. Sept. 10, 2013).

⁴⁷ The error does crop up in a 2011 article that, because of its timing, could not have been a common origin of the district courts’ mistakes (and none of the post-2011 decisions making the error cites the article). See Peter C. Alexander, *Bankruptcy, Divorce, and the Rooker–Feldman Doctrine: A Potential Marriage of Convenience*, 13 J.L. & FAM. STUD. 81, 99–104, n.120 (2011) (using *Lance* district court’s formulation and wrongly citing that court’s decision as “aff’d on other grounds” by Supreme Court). And the misreading of *Lance* has appeared in one state administrative decision that we have found. See *N. Cent. Elec. Coop. v. Otter Tail Power Co.*, Case No. PU-11-701, 2012 WL 3174113 ¶ 21 (N.D. Pub. Serv. Comm’n June 14, 2012) (discussing precedent effects of related state- and federal-court decisions, but deciding the case on grounds other than *Rooker–Feldman*), *aff’d sub nom.* *N. Cent. Elec. Coop. v. N.D. Pub. Serv. Comm’n*, 837 N.W.2d 138 (N.D. 2013).

⁴⁸ See *McGary*, 2020 WL 4335613, at *3 (Kelly, J.) (citing *Bradley v. DeWine*, 55 F. Supp. 3d 31, 41–42 (D.D.C. 2014) (Bates, J.)); *Jung v. Bank of Am., N.A.*, No. 18-962, 2018 WL 6680579, at *5 (D.D.C. Dec. 19, 2018) (Contreras, J.) (same), *aff’d*, No. 19-7049 (D.C. Cir. Jan. 15, 2020).

first judge there didn't notice, with the chambers deciding the later cases trusting the soundness of the first decision's (demonstrably misgrounded) approach.⁴⁹ The same might have happened in the Southern District of California, where two decisions were rendered by different judges, and the later decision does not cite the earlier one.⁵⁰ The three decisions in the Central District of California are from the same district judge.⁵¹ The two decisions in the Southern District of Alabama were based on reports and recommendations by one magistrate judge.⁵²

If the error occurred just once or twice, one might wonder if law clerks got sloppy, or if advocates were careless at best (dishonest at worst⁵³) and adversaries asleep at the switch. But the repeated, independent occurrences suggest that something more systematic is at work.

B. Reading Comprehension

Eleven of the eighteen opinions, from seven district courts, repeat the requirement of "privity" from the *Lance* district court's formulation.⁵⁴ But as already noted, the Supreme Court in *Lance* specifically rejected

49 See *supra* notes 14–18. *But cf.* EUGENE VOLOKH, *ACADEMIC LEGAL WRITING* 101–03 (2d ed. 2005) ("Whenever you make a claim about some source, you nearly always must read the original source. Do *not* rely on an intermediate source—whether a law review article or a case—that cites the original. . . . Intermediate sources may seem authoritative, but they're often unreliable, whether because of bias or honest mistake. You can't let their mistakes become your mistakes.")

50 *Coulter v. Murrell*, No. 10-CV-102-IEG, 2010 WL 2985165, at *3 (S.D. Cal. July 27, 2010) (Gonzalez, C.J.); *Yeager v. City of San Diego*, No. 05CV2089-BEN, 2007 WL 7032933, at *7 (S.D. Cal. June 1, 2007) (Benitez, J.), *aff'd*, 310 F. App'x 133 (9th Cir.) (mem.), *cert. denied*, 558 U.S. 1013 (2009).

51 See *Lewis v. L.A. Metro. Transit Auth.*, No. CV 19-1456 PSG, 2019 WL 6448944, at *4–5 (C.D. Cal. Sept. 10, 2019) (Gutierrez, J.); *Robinson v. Mortg. Elec. Registration Sys.*, CV 19-2185 PSG, 2019 WL 2491550, at *6 (C.D. Cal. June 14, 2019) (Gutierrez, J.); *Richards*, 2017 WL 7410985, at *6 (Gutierrez, J.).

52 See *Williams v. Patterson*, No. 12-592-WS-M, 2013 WL 4827932, at *4 (S.D. Ala. Sept. 10, 2013) (Steele, J., adopting report and recommendation of Milling, M.J.); *Mitchell v. Bentley*, 11-00687-KD-M, 2012 WL 2862265, at *4 (S.D. Ala. Apr. 20, 2012 (Milling, M.J.)), *report and recommendation adopted*, 2012 WL 2862147 (S.D. Ala. July 11, 2012) (DuBose, J.), *aff'd sub nom. Mitchell v. Governor of Ala.*, 500 F. App'x 854 (11th Cir. 2012) (per curiam), *cert. denied*, 569 U.S. 973 (2013).

53 The possibility that counsel were deliberately trying to mislead courts seems slim in most of the cases, because it is usually hard to see a possible advantage in getting a court to use the *Lance* district court's formulation rather than that of the Supreme Court in *Exxon Mobil*. An exception would be if a party were trying to get the court to apply *Rooker–Feldman* to bar jurisdiction over a claim by a federal-court plaintiff in privity with a prior state-court loser, which is exactly what the Supreme Court disapproved in *Lance*. It does appear that a defendant in *Commodities Export Co.*, *supra* note 11, may have unsuccessfully tried such a ploy. See *Commodities Export Co. v. City of Detroit*, No. 09-CV-11060-DT, 2010 WL 2633042, at *10–11 (E.D. Mich. June 29, 2010) (rejecting as frivolous argument that *Rooker–Feldman* should apply on basis of privity, pointing out that party making that argument "accurately quotes those certain words from the Court's opinion in *Lance*, but the cited material comes from the Court's recitation of the *district court* opinion which the Court then proceeded to vacate"), *aff'd on other grounds sub nom. Commodities Export Co. v. Detroit Int'l Bridge Co.*, 695 F.3d 518 (6th Cir. 2012). In some of the other cases relying on the *Lance* district court's language, their quotations omit the language about privity at the end of the first requirement. See *infra* note 54. And whether the opinions include that language or not, privity issues have not been present in the *Rooker–Feldman* analysis in any of the other cases.

54 The U.S. District Court for the District of Colorado, whose decision was vacated in *Lance*, omitted privity from the formulation in later cases. See *Avery v. Bd. of Cty. Comm'rs*, No. 17-cv-01016-WJM-KMT, 2017 WL 9615892, at *4 (D. Colo. Nov. 20, 2017), *report and recommendation adopted*, 2018 WL 1466241 (D. Colo. Mar. 26, 2018); *Turf Master Indus. v. Bd. of Cty. Comm'rs*, No. 09-cv-00890-MEH-MJW, 2009 WL 2982846, at *5–8 (D. Colo. Sept. 15, 2009). The U.S. District Court for the District of Columbia is the only other court whose opinions adopting the *Lance* district court's formulation omit privity. See *McGary v. Deo Ravindra*, No. 19-3249, 2020 WL 4335613, at *3 (D.D.C. July 28, 2020); *Jung v. Bank of Am., N.A.*, No.

privity as a relevant consideration in deciding whether *Rooker–Feldman* applies.⁵⁵ The issue in *Lance* was not complex, and the per curiam opinion is straightforward.

The conclusion is inescapable and troubling: the authors of these district-court opinions did not actually read the Supreme Court’s full *Lance* opinion (or worse, they read but did not comprehend what *Lance* was saying about the lower court’s privity requirement). Even if a district judge might unquestioningly adopt the analysis of a previous opinion within the district, the initial failure to read or comprehend *Lance* happened at least seven separate times in these district courts.

Most district judges have law clerks or research staff whose job is to help guard against such errors. And even if the judge and his or her staff are too overburdened to read and comprehend authorities they are relying on to craft their analysis, counsel representing a party⁵⁶ has a strong incentive to point out when the district court relies on incorrect law. So in each of these cases, the *Lance* error was likely the product of slack efforts by multiple actors.

How can it be that so many judges, lawyers, and research staff feel confident quoting and relying on a Supreme Court decision they haven’t bothered to read in full? Perhaps modern research techniques played a small role.

Technological advances provide ever-more-efficient research tools, but in this instance the ease of searching electronic databases of judicial opinions might have facilitated the error. We performed a search of Westlaw Edge’s database of U.S. Supreme Court cases using the question *What are the elements of the Rooker–Feldman doctrine* (no quotation marks or other punctuation). With the results sorted by relevance, the first two cases displayed were *Exxon Mobil* and *Lance*. And selecting “Most detail” brought up the passage in which the *Lance* Court quoted the lower court’s statement of *Rooker–Feldman*’s “requirements.”⁵⁷ For a researcher

18-962, 2018 WL 6680579, at *5 (D.D.C. Dec. 19, 2018), *aff’d*, No. 19-7049 (D.C. Cir. Jan. 15, 2020); *Terry v. DeWine*, 75 F. Supp. 3d 512, 523 (D.D.C. 2014); *Terry v. First Merit Nat’l Bank*, 75 F. Supp. 3d 499, 508 (D.D.C. 2014); *Bradley v. DeWine*, 55 F. Supp. 3d 31, 41 (D.D.C. 2014).

⁵⁵ *Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam); *see supra* note 9 and accompanying text.

⁵⁶ Plaintiffs were represented by counsel in only six of the eighteen cases in which the *Lance* error was made. *See Lewis*, 2019 WL 6448944; *Robinson*, 2019 WL 2491550; *Roe v. Cal. Dep’t of Developmental Servs.*, 16-cv-03745-WHO, 2017 WL 2311303 (N.D. Cal. May 26, 2017); *Mitchell*, 2012 WL 2862265, *report and recommendation adopted*, 2012 WL 2862147 (S.D. Ala. July 11, 2012), *aff’d sub nom. Mitchell v. Governor of Ala.*, 500 F. App’x 854 (11th Cir. 2012) (per curiam), *cert. denied*, 569 U.S. 973 (2013); *Rustin v. Rustin (In re Rustin)*, No. 04-50890-NPO, 2011 WL 5443067 (Bankr. S.D. Miss. Nov. 9, 2011); *Turf Master*, 2009 WL 2982846.

⁵⁷ Search conducted Jan. 30, 2020. Also on that date, we searched the LEXIS Advance database of U.S. Supreme Court cases using the question *What are the requirements of the Rooker–Feldman doctrine* (again, no quotation marks or other punctuation). The search brought up *Lance* as the first case in the expanded results; selecting “Graphical view” and clicking on the first graphical marker within the *Lance* Court’s opinion brought up the passage in which the Court quoted the lower court’s statement of *Rooker–Feldman*’s “requirements.”

who is not already familiar with the history of the *Rooker–Feldman* doctrine and the significance of *Exxon Mobil*'s narrowing of the doctrine,⁵⁸ it might seem like a good idea to go directly to *Lance* for what appears (outside its context) to be the Court's most recent definitive statement of *Rooker–Feldman*'s requirements.⁵⁹ If the researcher is working on a case that clearly fails to satisfy one or more of those requirements, and the researcher is pressed for time, it might be tempting to skip the remainder of *Lance* and not to bother with the older *Exxon Mobil* opinion.

That the Supreme Court presented the *Lance* district court's formulation as an enumeration of "requirements" might add to a harried researcher's confidence that he or she has found a definitive statement of current law.⁶⁰ By contrast, the correct criteria are stated in *Exxon Mobil* and reiterated in *Lance* as plain, unenumerated text.⁶¹ The attraction and power of an enumerated list seem to be confirmed by some lower courts' use of enumeration in stating the *Exxon Mobil* criteria.⁶²

It is worth noting that the *Lance* Court's recitation of the district court's formulation of *Rooker–Feldman* "requirements" is not the subject of any headnote in the unofficial reporters of Supreme Court decisions (or in the Westlaw Edge or LEXIS Advance report of *Lance*).⁶³ Thus the reporters' editors correctly understood that the *Lance* Court's quotation of the district court was intended only as a description of the lower court's statement, not an endorsement of it. And a researcher working the old-fashioned way with *West's Federal Practice Digest 4th & 5th* or the *U.S. Supreme Court Digest, Lawyers' Edition*⁶⁴ (or the online equivalent,

⁵⁸ See *Exxon Mobil Corp. v. Saudi Basic Indus.*, 544 U.S. 280, 283–84 (2005) ("Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases The *Rooker–Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: 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."); see also *supra* notes 8–9 and accompanying text.

⁵⁹ See Katrina Fischer Kuh, *Electronically Manufactured Law*, 22 HARV. J.L. & TECH. 223, 246–47 (2008) ("During a typical electronic word search, [in contrast to a search using print digests and key numbers], a researcher will likely receive far less information about a case prior to reading its text. Usually, the only immediate information that an electronic researcher will have about a case (before being exposed to the case text) is that it meets the criteria of her individually crafted search. This is because electronic search results are frequently listed with the case citation followed by a short snippet of text from the case highlighting where in the case the searched-for terms appear. Researchers are invited to jump directly into not just the case text, but the section of the case text deemed most responsive to the search terms." (footnote omitted)).

⁶⁰ See *Lance*, 546 U.S. at 462; see also *supra* note 10 and accompanying text; *infra* note 70 and accompanying text.

⁶¹ See *supra* note 8 and accompanying text.

⁶² See *supra* note 8.

⁶³ See *Lance v. Dennis*, 126 S. Ct. 1198, 1198–99 (2006) (per curiam); see also Peter A. Hook & Kurt R. Mattson, *Surprising Differences: An Empirical Analysis of LexisNexis and West Headnotes in the Written Opinions of the 2009 Supreme Court Term*, 109 L. LIBR. J. 557, 559 (2017) ("Each headnote represents a point of law extracted from the case . . ." (quoting STEVEN M. BARKAN ET AL., *FUNDAMENTALS OF LEGAL RESEARCH* 38 (9th ed. 2009))).

⁶⁴ See Hook & Mattson, *supra* note 63, at 559 ("Prior to computer-assisted legal research, a researcher typically started by referencing a multivolume printed digest. Digests contain all of the cases assigned headnotes with particular topics for a particular jurisdiction").

searching the West Key Number System or the LEXIS Advance headnotes from Supreme Court cases) would not find an entry presenting the *Lance* Court’s recitation of the lower court’s *Rooker–Feldman* “requirements” as a statement of current law.⁶⁵

C. Drafting of the Per Curiam *Lance* Opinion

As noted,⁶⁶ all the district-court decisions that make this error cite as authority the Supreme Court’s *Lance* decision. Even those that got the message about privity⁶⁷ take the remainder of *Lance*’s recounting of the lower court’s formulation as a definitive statement of law. Could it be that the Court’s per curiam opinion itself sowed the seeds of misinterpretation?

The *Lance* Court introduced its quotations from the lower court with the following words: “The *Rooker–Feldman* doctrine, the court explained, includes three requirements: . . .”⁶⁸ The main clause in this passage is the statement of what the doctrine “includes.” That the Court was tracking the lower court is presented as incidental information; the words “the court explained” are set off by commas as a nonrestrictive, parenthetical element.⁶⁹ As a matter of grammatical structure, that element could be omitted without changing the meaning of the main clause, which is a straightforward statement that the “*Rooker–Feldman* doctrine . . . includes three requirements.” That statement, of course, is not correct; the real requirements for the doctrine were articulated in *Exxon Mobil*. But the *Lance* Court’s use of the present indicative form of the verb “includes” could give an inattentive reader the impression that the statement is presented as an accurate description of current law.

The Court could have reduced the potential for misinterpretation by structuring the main clause as a statement about what the lower court said, rather than one about what *Rooker–Feldman* includes. And selecting words that ascribed less authoritativeness to the lower court’s view could have helped clarify that the Court was not adopting or endorsing that

⁶⁵ In the West Key Number System as displayed on Westlaw Edge, headnotes from the *Lance* district court’s opinion are accompanied by red flags, reflecting vacatur of the opinion. See West Key Number System, 106k509.2 (headnotes from *Lance v. Davidson*, 379 F. Supp. 2d 1117 (D. Colo. 2005)). Similarly, a search of LEXIS Advance displays stop signs accompanying headnotes from the *Lance* district court’s opinion. See LEXIS Advance results for search of U.S. Federal Cases, Headnotes, for “requirements of Rooker-Feldman doctrine” (headnotes from *Lance v. Davidson*, 379 F. Supp. 2d 1117 (D. Colo. 2005)).

⁶⁶ See *supra* note 46 and accompanying text.

⁶⁷ See *supra* note 54.

⁶⁸ *Lance v. Dennis*, 546 U.S. 459, 462 (2006) (per curiam).

⁶⁹ See WILLIAM STRUNK JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 2 (3d ed. 1979) (“Enclose parenthetical expressions between commas.”); MARJORIE E. SKILLIN & ROBERT M. GAY, *WORDS INTO TYPE* 189 (3d ed. 1974) (“A nonrestrictive phrase or clause is one that could be omitted without changing the meaning of the principal clause; it should be set off by commas.”).

view.⁷⁰ For example: “The district court opined that the *Rooker–Feldman* doctrine included three requirements: . . .” Such an articulation would have made clear that the Court was giving the lower court’s view solely as part of the procedural history of the case and not as current law that the lower court “explained.”

Grammatical and stylistic niceties aside, the per curiam *Lance* opinion read as a whole does show that the Court did not adopt or endorse the lower court’s *Rooker–Feldman* formulation.⁷¹ And it is not easy to excuse the inattention—by counsel on both sides, and by a judge and his or her law clerk—that occurs each time the misunderstanding of *Lance* appears in a court opinion.

VI. Conclusion

However small the effects of these several decisions’ repeated error in stating the approach for *Rooker–Feldman* analysis, the mistake seems to be getting into some judicial food chains. It first took place shortly after the *Exxon Mobil* and *Lance* decisions and has been repeated, including recently, over the years since. The sooner it gets removed, before others consume it to their possible detriment, the better.

More broadly, these decisions exemplify the danger of relying on a passage from a court opinion—even a Supreme Court opinion—without reading enough of the opinion to understand the context and purpose of the passage.

Finally, these decisions serve as a reminder that a reviewing court should take care to avoid framing a description of the proceedings below in terms that might mistakenly be read as an adoption or endorsement of the lower court’s analysis.

70 The authoritative appearance of the district court’s *Rooker–Feldman* “requirements” was likely enhanced by the Supreme Court’s presentation of them as an enumerated list, in contrast to the Court’s later presentation of the *Exxon Mobil* formulation as plain, unenumerated text. See *Lance*, 546 U.S. at 462, 464; see also *supra* notes 9–10 and accompanying text; *supra* notes 60–62 and accompanying text.

71 For a court that read *Lance* right, see *Commodities Export Co. v. City of Detroit*, No. 09-CV-11060-DT, 2010 WL 2633042, at *10–11 (E.D. Mich. June 29, 2010), *aff’d on other grounds sub nom.* *Commodities Export Co. v. Detroit Int’l Bridge Co.*, 695 F.3d 518 (6th Cir. 2012), see also *supra* note 11.