No. 22-7884 ORIGINAL

*IN THE*

*SUPREME COURT OF THE UNITED STATES*



*THERESA MARSHALL*
*Petitioner*

*vs.*

*EDUCATIONAL CREDIT MANAGEMENT GROUP, et al.*
*Respondents*

*On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit*

# PETITION FOR A WRIT OF CERTIORARI

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## QUESTION(S) PRESENTED

Whether Rooker-Feldman bar prevents federal district court or US court of appeals jurisdiction to hear, rule, and/or remand in a complaint case, concerning a year 2018 dismissed bankruptcy case?

Whether Rooker-Feldman bar prevents federal district court or US court of appeals jurisdiction to hear, rule, and/or remand in a complaint case if may conflict with a state court ruling, when favored party in state case, *did not have standing*?

Whether federal district court or US court of appeals has jurisdiction to hear, rule, and/or remand in a complaint case, if may conflict with a state court ruling, when unfavored party 42 USC § 1983 rights, and 14th amendment rights may have been violated, and no opportunity to defend by a party, in state case is evident?

Whether federal district court or US court of appeals has jurisdiction to hear, rule, and/or remand in a complaint case, if may *conflict with a state court ruling, when fraud* and *unclean hands* of *favored party* in state case is *evident*?

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Educational Credit Management Group;
Educational Credit Management Corporation (ECMC)
Kimberly Wood Tucker, Attorney

## RELATED CASES

*Theresa Marshall v. Richard D. Taylor, United States Bankruptcy Judge;* and Mark T. McCarty, Trustee - (No. 4:19-cv-913-DPM)
Complaint filed Dec 18, 2019
Order to dismiss without prejudice entered Dec 24, 2020
All filings should be filed in the new case, 4:20-cv-1373 DPM
filed Jan 4, 2021
*US District Court for the Eastern District of Arkansas*

*Theresa Marshall v. United States Trustee* - (No. 4:20-cv-1373-DPM), and Mark T. McCarty, Trustee
Complaint filed Jan 7, 2021
Brief filed Jan 22, 2021
Motion for Reconsideration and newly discovered evidence denied Jan 14, 2022
Case terminated Sept 30, 2021
*US District Court for the Eastern District of Arkansas*

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## STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[X ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[ X] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court
appears at Appendix _____to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

## JURISDICTION

[X ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 1/24/23.

[ ] No petition for rehearing was timely filed in my case.

[X ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 2/28/23, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____ .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

## JURISDICTION

The Eighth Circuit issued its *unpublished* opinion on January 24, 2023, affirming district courts decision.

The Eighth Circuit issued its order denying panel rehearing and en banc rehearing, *and* denied amended petition for rehearing on February 28, 2023.

This Court has jurisdiction under 28 U.S.C. 1254(1)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *Rooker–Feldman* doctrine, pursuit 42 U.S.C. §1983.

Article III, Section 2 of the United States Constitution provides in relevant part: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," and to certain "controversies."

28 U.S.C. § 1291 provides in relevant part: "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .."

28 U.S.C. § 1292(e) provides: "The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided under subsection (a), (b), (c), or (d)."

## STATEMENT OF THE CASE

1. This case is about a student loan debt that was was discharged in petitioners 1995 bankruptcy pursuit 11 USC 523 (a)(8)(a). - *(Pet App) - (Brief addendum) (22-2460) - (filed 9/14/22) - (pg 15) - (pgs 10-20)*

2. The bankruptcy court erred dismissing, petitioners year 2016, Chapter 13 bankruptcy and overruling Trustees plead not to dismiss. - *(Violation of due process, pursuit 42 U.S. Code § 1983) - (Violation bankruptcy court and trustee procedural rules) - (4:16-bk-15651) (Hearing 4/26/18) - (Transcript) - (pg 6) - (lns 1-10) (Orders) - (Docs 185, 206) - (Appendix K, L) - (Attached)*

Bankruptcy court used the administrative dismissal, without any finding of "cause" to dismiss petitioners 2016 bankruptcy. *(11 USC 349(a) (West 1995) (emphasis supplied). (Violation of due process, pursuit) - (42 U.S. Code § 1983) (4:16-bk-15651) - (Doc 272) - (Order dismissing case) (filed 12/6/17) - (Appendix M) - (Attached)*

*All payments to Trustee by petitioner were up-to-date by above mentioned, hearing of April 26, 2018. (Appendix O) - (Attached)*

3. The bankruptcy court erred dismissing, petitioners year 2018, Chapter 13 bankruptcy *with prejudice and 180 day re-filing bar* where there was no hearing held, no witness from opposing side to testify, no violation by debtor in payments to Trustee, etc. *Violation of due process* - (Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019) - (Pure Oil Co. v. City of Northlake, 10 Ill.2d 241, 245, 140 N.E. 2D 289 (1956) - (Hallberg v Goldblatt Bros., 363 Ill 25 (1936); (8) If the court exceeded its statutory authority. Rosenstiel v. Rosenstiel, 278 F. Supp. 794 (S.D.N.Y. 1967) - *(Violation of due process, pursuit 42 U.S. Code § 1983) "In general terms, none of the orders disposed of a concrete dispute or conclusively determined a material issue in the bankruptcy case." - (BAPs 8th Circuit) - (Judgment) (18-6025) - (filed 9/27/18) - (Appendix H) - (Attached) (18-bk-12478)-(Doc 177)-(filed 9/6/18)-(Appendix I)-(Attached) (18-bk-12478)-(Doc 174)-(filed 9/4/18)-(Appendix J)-(Attached)*

## DISTRICT COURT

4. *(Petitioner)* filed a *complaint* in *federal district court* challenging the constitutionality of her year 2016 and 2018 bankruptcy, including pursuit *(42 USC § 1983)* against respondents ECMC Group et al., pursuit *28 U.S.C. §1331, §1332 (4:21-cv-00751-DPM) - (Complaint) - (filed 8/24/21)*

5. *(Petitioner)* filed a *amended complaint* in federal district court *with courts instructions* on December 17, 2021 and December 23, 2021. - ***(Note)*** *- (Court placing (X) per petitioners complaint filings and not first time) (4:21-cv-00751-DPM) - (Order) - (filed 11/16/21)*

6. District court stayed petitioners complaint case *after* respondents had already been served amended complaint and stating (1) *"working on screening Marshall's amended complaint and considering her motions to amend that pleading."* (2) *The deadline for any defendant to answer or file a Rule 12(B) motion is stayed pending the Court's screening decision and ruling on Marshall's pending motions."-(4:21-cv-00751-DPM)-(filed 2/2/22) Summons issued to respondents entered per docket 1/11/22 Notice of filing, proof of service, entered per docket 1/11/22*

7. District court states "In Marshall's 2002 bankruptcy, Judge Mixon rejected her challenge to ECMC's claim. As she acknowledges in one of her amendments, he concluded that "ECMS's claim is supported by sufficient documentation setting for the the nature and amount of claim."

Marshall (petitioner) was being sarcastic to above statement made by Judge Mixon, and clarified that to district court in reconsideration motion. - *(4:21-cv-00751- DPM) (Motion) - (filed 6/3/22)*

8. District court dismissed petitioners complaint case *with prejudice* stating, *"Marshall's complaint as amended fails to state a claim that can go forward."* - *"Her motion for appointed counsel, Doc. 17, is denied as moot."* "Her amended complaint will be dismissed with prejudice because she cannot overcome the limitations bar or preclusion bar by further amending her pleading." *(4:21-cv-00751- DPM) - (Order) - (filed 5/25/22) - (pg 4)*

9. District court states, "In this case, Marshall alleges that Educational Credit Management Corporation and Educational Management Group acted wrongly in many of those proceedings. She pleads details and dates. Marshall says ECMC *had no standing as a guarantor of her student loan,* but asserted loan-based claim in her bankruptcies even though those loans had been discharged in earlier bankruptcy proceedings. *She is critical of Judge Richard D. Taylor's handling of these claims.*" - *(4:21-cv-00751- DPM) - (Order) - (filed 5/25/22) - (pg 2) (Judge Taylor recused in 2005 bankruptcy for conflict of interest with ECMC) - (22-2460) - (US Court of Appeal) - (Brief addendum) (filed 9/14/22) - (pg 21) - (Appendix N) -* ***(Attached)*** *Ref: BAPs Judgment - (Appendix H) -* ***(Attached)***

10. District court denied petitioners motion for reconsideration of her amended complaint case *dismissal with prejudice. - (4:21-cv-00751- DPM) - (Order) - (filed 7/6/22) (pg 3) - (Appendix D) - (Attached)*

11. District court states "*In its screening Order, the Court identified Marshall's 2002 bankruptcy case as a source of preclusion. An Arkansas state court agreed more than a decade ago. That raises an issue not addressed in the Court's prior Order: the application of the* Rooker-Feldman doctrine. *The relief Marshall seeks in this case, if granted, would nullify a 2011* ***state court*** *judgment in favor of ECMC in Marshall v. Educational Credit Management Co., No. 60CV-10-5500 (Cir. Ct. Pulaski Cty. 1 April 2011). ....." - (4:21-cv-00751- DPM) - (Order) - (filed 7/6/22) - (pg 1-2) - (Appendix D) – (Attached) Ref: BAPs Judgment - (Appendix H) -* ***(Attached)***

12. District court states, "Marshall also seeks *sanctions against the attorney who represented ECMC/ECMG* in the most recent of her many bankruptcy cases. As the Court said in its screening Order, any issues that Marshall has with the attorney's conduct could have been (and should have been) raised and resolved in those proceedings." - *(4:21-cv-00751- DPM) - (Order) (filed 7/6/22) - (pg 2) - (Appendix D) - (Attached) Ref: BAPs Judgment - (Appendix H) -* ***(Attached)***

**13.** There is *no state court case that prevents* district court authority to hear petitioners amended complaint case concerning her *unconstitutional dismissal from her year 2018 bankruptcy pursuit 28 USC § 1331 and 28 USC § 1332. (4:21-cv-00751-DPM) -* ***(See No. 11 above) - (See No. 21 below)*** *(Pet App) - (Brief) - (22-2460) - (filed 9/14/22) - (pgs 23-26) (Brief Addendum) - (22-2460) - (filed 9/14/22) - (pgs 13-16)*

*Circuit court case was dismissed without ever going to trial. (60cv-10-5500)*

## US COURT OF APPEALS 8TH CIRCUIT

14. US Court of Appeals 8th Circuit, *affirmed* district courts ruling. - (Judgment) - *(filed 1/24/23) - (22-2460)*

15. US Court of Appeals 8th Circuit, *affirmed* district courts ruling. *(Opinion) - (filed 1/24/23) - (22-2460) (unpublished, per curiam)*

16. US Court of Appeals 8th Circuit, *denied* petitioners en banc rehearing petitions. - *(Order) - (filed 2/28/23) No. (22-2460)*

**17.** US Court of Appeals 8th Circuit *opinion and order,* conflicts with BAPs 8th Circuit ruling against same respondents in petitioners year 2018 bankruptcy appeal. *(BAPS 8th Circuit) - (Judgment) - (18-6025) - (filed 9/27/18) - (Appendix H) - (Attached)*

**18.** US Court of Appeals 8th Circuit *took no position, when alerted by petitioner that district courts ruling conflicted with BAPs 8th ruling in petitioners 2018 bankruptcy. - (See No. 17 above)*

**19.** US Court of Appeals 8th Circuit made *one ruling* for *two separate petitioners,* appeals, namely Wells Fargo N.A., and Deutsche Bank National Trust et al.; and Educational Credit Management Group/Corporation; and Kimberly Wood, Tucker, attorney. - *(No's (22-2470) - (22-2460) (Appendix A, C) - (Attached)*

"Accordingly, we affirm in *both appeals,* see 8th Cir. *R. 47B,* and we deny Marshall's pending motions as moot." *(Per curiam filed 1/24/23) - (Appendix A) - (Attached)*

**20.** US Court of Appeals 8th Circuit, Mandate - *"In accordance with the opinion and judgment of January 24, 2023, and pursuant to provision of" FRAP 41(a), the formal mandate hereby issued . . " (22-2460) - (filed 3/10/23)*

## CIRCUIT COURT

21. It is petitioners belief that attorney Samuel High of Wilson & Associates Law Firm forged the alleged order dismissing circuit court case. Attorney High was the alleged attorney for Wells Fargo and Deutsche Bank, respondents in another appeal this court. - *(60cv-10-5500)*

Attorney High was alleged attorney in above mentioned circuit court case for ECMC et al., before attorney *Kimberly Wood Tucker* came on board. - ***(See No. 11 above)*** ***(See No. 13 above)*** - *(Pet App) - (Brief) - (22-2460) (filed 9/14/22) - (pgs 23-26) - (Pet App) - (Brief Addendum) (22-2460) - (filed 9/14/22) - (pgs 22-24)*

(Petitioner) was at circuit court and clerk could not find alleged *order* from court Judge. Petitioner saw attorney High in/out filing area of court house and when petitioner and clerk left trying to find *alleged*, already signed *order*, then returned, clerk found order on some adjacent desk.

## AMENDED COMPLAINT – DISTRICT COURT

22. *(Petitioners) amended* complaint filing federal district court *and* appeal filing court of appeals Eight Circuit ***involves a***:

*(1)* 2016 bankruptcy where court ruled ECMC to be guarantor of all petitioners student loans. - *(Violation of student loan transfer rules - Bankruptcy Rule 3001(e)(2), (Violation of guarantor/servicer relationship rules) - (Amended complaint) (filed 12/17/21) - (pg 26-27) - (21-cv-00751-DPM) (See: Amendment to Amended Complaint) - (filed 12/23/21) (pg 3, No. 9) - (pgs 26-30) -* ***(Actual final amended complaint)***

*(2) Conflict of interest between Judge Taylor and respondents ECMC et al. - (Pet App) - (Brief Addendum) (22-2460) - (filed 9/14/22) - (pg 21) (Appendix N) - (Attached)*

*(3) With the exception of loan discharged in petitioners 1995 bankruptcy and California Student Aid Commission was guarantor, all other of petitioners loans were held by another entity. - (Pet App) - (Brief) - (22-2460) - (filed 9/14/22) - (pgs 28, 27, 23-24)*
*(Pet App) - (Brief Addendum) - (22-2460) - (filed 9/14/22) (pgs 11-18)*

*(4) Petitioners loans with other entity was never in default and per law was returned to proper entity as* servicer.

*(5) Guarantors of student loans* do not *change because you file bankruptcy. - (4:21-cv-00751-DPM) - (filed 12/23/21) (pgs 26-28)*

*(6) Petitioners* guarantor *of her later loans was Great Lakes from when petitioner last was in school until year 2016.*

*(7)* Unlawful document was obtained from Great Lakes by ECMC and filed in petitioners 2018 bankruptcy against student loan rules. - *Violation of student loan transfer rules Bankruptcy Rule 3001(e)*

*(8)* When bankruptcy ends, especially when bankruptcy ends without a discharge from bankruptcy, student loans must return to the original guarantor and servicer.

*(9) ECMC et al., has found how to become guarantor of student loans that they have no legal right or standing to.*

**(10)** ECMC has been a party to many lawsuit and according to what day it is, flips from being a servicer to guarantor, when in essence, *they are neither, and certainly* not *for the state of Arkansas.*

*(11) Relation back cases filed by petitioner, not taken into consideration by court.*
*(4:19-cv-00913-DPM) - (filed: 12/18/19)*
*(4:20-cv-01373-DPM) - (filed 01/07/21)*

## US Supreme Court

This case presents an important jurisdictional issue concerning *Rooker-Feldman* bar as it pertains to state court judgments that is now the subject of an entrenched circuit and supreme court split, that *this court* could completely clarify, with this case matter.

This appeal respondent (ECMC) are serial violators of student loan rules, U.S Government and Consumer Financial Protection Bureau agreements and has and continues to have no concern of the public to whom are its alleged customers. - *Consumer Fin. Protection Bureau vs. Educational Credit Management Corporation (ECMC) - (Opinion) (21-mc-00019) - (SRN/DTS) - (filed 1/11/22) - (Charles R. Estes et al v. ECMC Group, Inc.) - (Civil No. 19-cv-822 -LM) - (Opinion) (filed 1/6/21) - (Order) - (No. 2021 DNH 003 P) - (Angeles Ford, plaintiff-appellant, vs. Helms Career Institute, Educational Credit Management Corporation, Bass and Associates, defendants-appellees)*

**15.** This Supreme Court has issued *no definitive ruling* concerning *Rooker-Feldman* doctrine and district courts authority to hear a case, that is alleged to have, had a complaint case, also filed and ruled in a state court proceeding and there are many conflicts of opinions between judges, *this court*, both, past and present. - *(22-2460 ) - (Appellant brief) (Filed: 09/14/2022) - (pgs 12-19)*

The Nebraska Supreme Court ruled that res judicata does not apply if the trial court does not render findings of fact or conclusions of law on the issue alleged to be barred. - *In Schuelke v. Wilson, 255 Neb. 726, 733, 587 N.W.2d 369, 375 (1998) -*

*Allen v. McCurry, 449 U.S. at 94. - The collateral estoppel bar is inapplicable when the claimant did not have a "full and fair opportunity to litigate" the issue decided by the state court.* Id. At *101. Thus, a claimant can file a federal suit to challenge the adequacy of state procedures.*

There are certain situations where the prior judgment's that's been made ought not to have the usual consequences of extinguishing the entire claim. Rather, the plaintiff should be left with an opportunity to *litigate in a second action* that part of the claim which they justifiably omitted from the first action. ***Splitting a Claim*** - *See Rennie, 294 Or. at 329 n. 9 (citing 18*

*Charles A. Wright, Arthur C. Miller & Edward H. Cooper, Federal Practice and Procedure S 4415 at 124-125; and Annot., 40 A.L.R.3d 108 (1971) - (See: Allen v. McCurry, 449 U.S. at 94)*

The reason that "a suit claiming damages for prior infringements *does not bar* a subsequent suit for damages for [identical, post-judgment] infringements" (Pet. App. 50) is not that the claims are "different" for preclusion purposes. They are not. The reason, instead, is that the plaintiff must actually have been able to raise the claim in the prior suit before preclusion can apply. *See, e.g., Allen, 449 U.S. at 94* (res judicata bars only those claims that were or "could have been" raised). "[E]ven where two claims arise out of the same transaction, [a] second suit is not barred by [claim preclusion] unless the plaintiffs had the opportunity in the first suit to fully and fairly litigate the particular issue giving rise to the second suit." *Creech v. Addington, 281 S.W.3d 363, 382 (Tenn. 2009)*

"The Court affirmed that the Rooker–Feldman doctrine was statutory (based on the certiorari jurisdiction statute, *(28 U.S.C. § 1257)* and not constitutional - *(Exxon Mobile Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) Supreme Court)*

Even the *Supreme court* cautioned against applying the Rooker-Feldman doctrine too broadly. "Rather, the doctrine is supposed to be confined to "*limited circumstances*" where "state-court losers complain [ ] of injuries caused by state-court judgments rendered before the district court proceedings commenced and invit[e] district court review and rejection of those judgments."4 Thus, as understood by the Third Circuit in PEDP, *a federal court has jurisdiction "as long as the 'federal plaintiff present[s] some independent claim,' even if that claim denies a legal conclusion reached by the state court."*5 *(Philadelphia Entertainment & Partners) (1/11/18) - (Third Circuit)*

The district court held that the Rooker-Feldman doctrine did not bar the claim because the court was not "attempting to sit as a final or intermediate appellate state court as to the merits of the Texas action. On appeal, the Second Circuit affirmed, noting that Texaco *did not raise the due process* and *equal protection claims* in the Texas courts, and *therefore the district court had jurisdiction over these claims because they were not inextricably intertwined with the state-court action.65*" - *(Pennzoil Co. v. Texaco, Inc.)*

Justice Scalia authored a concurrence, arguing that he did not believe that "the so-called Rooker-Feldman doctrine" prevented the Court from being able to decide Texaco's challenge to the *constitutionality of the Texas stay and lien provisions.68* His reasoning was that the challenge neither involved issues litigated in state court nor issues *inextricably intertwined* with those litigated in state court. *(Pennzoil Co. v. Texaco, Inc.)*

*The lack of guidance from the Supreme Court, even after Pennzoil, led to a variety of splits in the circuit courts regarding the Rooker-Feldman doctrine. For example, the Seventh and Ninth Circuits applied the doctrine narrowly, while the Second, Eighth, and Tenth Circuits interpreted it quite broadly.*

The Court tried to clarify the doctrine's breadth and provide further direction in Exxon Mobil Corp v. Saudi Basic Indus. Corp. In Exxon Mobil Corp., the Court established that Rooker-Feldman is <u>not</u> triggered simply by the existence of parallel state and federal court litigation.*76*

On interlocutory appeal in the federal trial, the Third Circuit raised the question of *subject matter jurisdiction* on its own motion.*84* While the court noted that the district court had *subject-matter jurisdiction* at the beginning of the suit, it reasoned that jurisdiction might have been lost under the Rooker-Feldman doctrine since Exxon Mobil's claims were already litigated in state court.*85* Rejecting Exxon Mobil's argument that Rooker-Feldman *could not apply* since Exxon Mobil filed its complaint long before the state-court judgment, the court of appeals determined it was unable to proceed with the case.*86* *The Supreme Court granted certiorari.87*

In the Court's *majority opinion, Justice Ruth Bader Ginsburg* noted that the Rooker-Feldman doctrine has only been applied by the Court to bar federal subject matter jurisdiction twice—*in the two cases that give the doctrine its name. 88 She also noted the lower courts often misapply it. (Exxon Mobil Corp v. Saudi Basic Indus. Corp)*

In an attempt to be direct and clear, Justice Ginsburg tried to define the exact cases where the doctrine *may be applied*, stating that it 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. *"91* With this rationale, the Court reversed the appellate court's judgment, finding that the Rooker-Feldman doctrine did not apply.*92*

"Exxon Mobil Corp. thus established that "[w]hen there is parallel state and federal litigation, Rooker-Feldman is not *triggered simply by the entry of judgment in state court."93 (Justice Ruth Bader Ginsburg) - (Exxon Mobil Corp v. Saudi Basic Indus. Corp)*

Despite Justice Ginsburg's attempt in Exxon Mobil, Corp. to clarify the Rooker-Feldman doctrine, *several circuit splits have still developed regarding its proper application.* For example, several circuits have fractured over whether *incidents of fraud in state court proceedings may give rise to Rooker-Feldman.*

*94*Ninth Circuit, which held that "Rooker-Feldman does not bar a federal claim alleging *extrinsic fraud* but does bar a claim for *intrinsic fraud.* It would be a major injustice to refuse to allow parties relief after a judgment is entered *hinging on fraudulent activities by the adverse party.* This approach strikes a proper balance between *allowing some form of recompense for fraud,* while also encouraging litigants to raise these claims in one proceeding if possible. The Court should decide on this and establish a uniform rule for the circuits."*102 - (Exxon Mobil Corp.) - (Continental Nat'l Bank v. Holland Banking Co., 66 F.2d 823, 830 (8th Cir. 1933)*

*103* In 2019, the Third Circuit flipped on its prior post-Exxon Mobil Corp. rulings *and held that only final judgments or decrees can fall under the Rooker-Feldman framework.105* Other circuits have agreed. While this interpretation seems to be more aligned with the context and teachings of Exxon Mobil Corp., not every court has come to the same determination.*107 - (Exxon Mobil Corp. v. Saudi Basic Indus. Corporation)*

Similarly, in an action involving a *property dispute,* the U.S. District Court for the Western District of Louisiana noted in its discussion that "[s]ince Exxon Mobil Corp., the federal circuit courts have been split as to whether *all state proceedings, including appeals, must be resolved before the federal suit begins in order for the Rooker-Feldman doctrine to apply.*"108

The circuits have also been split over which *analytical framework* to use when deciding whether Rooker-Feldman applies. Courts are torn on whether the *inextricably intertwined* test, formerly the touchstone of the Rooker-Feldman analysis, remains intact after Exxon Mobil Corp., and if so, to what extent. This confusion arose because the Supreme Court *almost ignored* the *phrase entirely* in its Exxon Mobil Corp. opinion. The Sixth Circuit has interpreted Exxon Mobil Corp. as abandoning the use of the phrase *except for specific instances* where the source of the injury was not the state court judgment. In other words, "the phrase *'inextricably intertwined' has no independent content.* It is *simply a descriptive label* attached to claims that meet the requirements outlined in Exxon Mobil." The Fourth Circuit has come to a similar conclusion. *Other circuits continue to use the inextricably intertwined test as a separate scapegoat* through which Rooker-Feldman may apply.*113*

Circuits also disagree on whether the court must look to the nature of the requested relief in order to determine how to apply Rooker-Feldman. The Third and Sixth Circuits have held that the court *must look at the nature of the requested relief* in their analysis. The Eleventh Circuit does not take this approach, finding it inconsistent with its prior precedents. Instead, the Eleventh Circuit "focus[es] on the *federal claim's relationship* to the issues involved in the state court proceeding instead of the type of relief sought by the plaintiff."*118*

Although not technically circuit splits, other sources of confusion have come to light regarding the doctrine. For example, some circuits have applied a *"reasonable opportunity" exception.119* Under this exception to the Rooker-Feldman doctrine, *a federal lawsuit is allowed to proceed if the federal plaintiff lacked a reasonable opportunity to litigate its claims in the state court proceeding.120* Is this exception valid in a modern Rooker-Feldman analysis? The Seventh Circuit questioned this exception's viability post-Exxon Mobil Corp., but has failed to expressly abandon it.*121* Additionally, does the Rooker-Feldman doctrine apply to claims for *prospective relief*? The Sixth Circuit has held that it *does not.122* While these instances are not necessarily splits among the circuits as of yet, they show the Rooker-Feldman doctrine has been further muddled *without proper Supreme Court guidance.*

Judge Sutton accused the doctrine of deceiving federal courts into believing that they lack jurisdiction over cases Congress specifically empowered them to preside over, which *140* he attributed to lower courts' misinterpretation of Exxon Mobil. *Defendants (LVNV Funding and Midland Funding)*

*Furthermore, Judge Sutton argued the doctrine provides ample room for federal courts to avoid deciding federal questions. As Sutton pointed out, the doctrine was used as a heavy docket-clearing device for federal courts for a long time.144*

*"Rather it is because it failed to do so in a clear-cut and readily applicable way. It would take a single Supreme Court opinion on Rooker-Feldman, this time with definitive answers and a precise framework, to qualm the abuses currently observed in litigation involving the doctrine."*

*In all events, Bankruptcy Code provisions may independently operate to affect transactions that, under state law, could not otherwise be challenged.* "To further the goals of bankruptcy policy, which include the equitable distribution of estate assets to creditors (among several others), it is important that the provisions of the Bankruptcy Code that seek to accomplish those goals not be retarded by state laws that have the opposite effect, if not the opposite purpose. Under a given state's laws, it may be legal for a governmental entity to appropriate a private entity's property in exchange for no consideration under particular circumstances.

But it may, in that same state, be perfectly legal for that private entity to gift its property to a third party for no consideration as well. In the latter case, no one would claim that the fact that the transfer was lawful under state law should prevent a trustee from avoiding that transfer under the applicable provisions of Chapter 5 of the Bankruptcy Code. PEDP confirms that, in the former case, the result is no different." *(Philadelphia Entertainment & Development Partners) - (1/11/18) - (Third Circuit)*

Rooker-Feldman does not bar jurisdiction where a federal plaintiff is complaining of a *legal injury caused by an adverse party, not a state court judgment. - Noel v. Hall, 341 F.3d 1148, 1163-65 - (9th Cir. 2003)*

Thus, *if the doctrine is left to "wreak havoc" on the lower courts*, as Judge Sutton suggested that it has, then it can be more harmful than helpful.

The solution is not to erase the doctrine, however, but rather to clarify it. The Supreme Court has only addressed Rooker-Feldman *twelve times*, with the last being in 2011.

In each of these instances, the Court provided little clarification to the doctrine. The doctrine's current status demands that the Supreme Court provide further guidance on its limits and overall function, *especially where it concerns petitioners, this appeal case.*

## REASON FOR GRANTING THE PETITION

This case presents an important jurisdictional issue that is now the subject of an entrenched circuit and supreme court split and will give this court opportunity to *fully* clarify when to use the *Rooker-Feldman doctrine. (See: US Supreme Court) - (No. 15 above).*

*Courts are sometimes using the Rooker-Feldman doctrine, unfairly, to dismiss cases, so to unclog dockets.*

Petitioners amended complaint, district court has all the reasons why Rooker-Feldman should be clarified, and *below* is the reason this court should grant the *writ petition.*

Petitioner amended complaint district court is of actions of respondents that occurred in her year 2016 and 2018 bankruptcy. - *4:16-bk-15651 - 4:18-bk-12478 (Amended Complaint)-(filed 12/17/21)-(4:21-cv-00751-DPM)*

Petitioner filed district court because constitutional and federal questions of actions of bankruptcy court Judge and bankruptcy Trustee needed to heard by court, thus district court was proper court for complaint filing. *28 USC § 1331*

Petitioner filed district court because respondents were citizens of another state and amount at stake is more than $75,000. - *28 USC § 1332 (Order) - (District Court) - (filed 11/16/21) (4:21-cv-00751-DPM) - (pg 1)*

There is no question that that bankruptcy judge and bankruptcy trustee abused their power and threw bankruptcy and trustee rules and procedures out the window in petitioners 2016 and 2018 bankruptcy so, petitioners right to have filed a complaint, district court against respondents, was proper. *(Violation 42 U.S.C. § 1983) - (Procedural due process deprivation) (BAPs 18-6025) - (Judgment) - (filed 9/27/18) - 2018 Bankruptcy (Appendix H) - (Attached) (Hearing 4/26/18) - (Transcript) - (pg 28) - (lns 1-17) (Hearing 4/26/18) - (Transcript) - (pg 6) - (lns 1-10) (Hearing 4/26/18) - (Transcript) - (pg 20-21) - 2016 Bankruptcy*

*Respondents (ECMC) were not a party and was not present at above mentioned motion for stay hearing on April 26, 2018.*

Respondents (Educational Credit Management Group, et al.) has pursued petitioner for a student loan debt that was discharged in petitioners 1995 bankruptcy, for which respondents has no standing, yet have monetarily benefited, since on/about year 2003, *including the taking of petitioners tax returns without standing . - (Pet App) - (Brief Addendum) (No. 22-2460) - (filed 9/14/22) - (pgs 11-18)*

Respondents has used bankruptcy as a haven to illegally come into possession of student loans, make themselves guarantor of illegally gained student loans, and monetarily benefit from those illegally gained student loans.

Respondents have gained access to the Education Department and Ombudsmans student loan database *nationwide* without any real standing, and above mentioned entities are not even the wiser and/or are involved.

*Thus, why the Biden administration is having to come in to try to fix the student loan, system problem.*

Petitioner is not a state court loser, inviting district court review and rejection of the state court judgment, but filed district court seeking redress for actions of the respondents, bankruptcy court judge, and bankruptcy trustee, while petitioner were in her year 2016 and 2018 bankruptcy.

Petitioner was represented by counsel until year 2016 and did not know of gravity of actions of respondents until year 2019.

There is no Rooker-Feldman bar of state court case that makes petitioners amended complaint <u>not</u> proper as filed district court, December 17, 2021. - *(21-cv-00751-DPM) Complaint initially filed August 24, 2021 - (21-cv-00751-DPM) (Pet App) - (22-2460) - (brief) - (filed 9/14/22) - (pg 12) (Pet App) - (22-2460) - (addendum) - (filed 9/14/22) - (pg 17) (BAPs 18-6025) - (Judgment) - (filed 9/27/18) - (Appendix H) - (Attached) - (**See:** No. 21 above)*

There is no statue of limitation, issue preclusion, or claim preclusion that makes petitioners amended complaint <u>not</u> proper as filed district court, December 17, 2021. *Complaint initially filed August 24, 2021 - (21-cv-00751-DPM) (Pet App) - (22-2460) - (brief) - (filed 9/14/22) - (pgs 21-22)*

Respondents has violated the *public interest* nationwide and petitioner, for at least (15) fifteen years and so far respondents have not had to defend themselves in open court for its actions against petitioner and reason for this appeal.
*Consumer Fin. Prot. Bureau v. Educ. Credit Mgmt. Corp. (ECMC)*
*Hann v. Educ. Credit Mgmt. Corp., No. 12-9006 (1st Cir. 2013)*
*Kristin Bruner-Halteman v. Educ. Credit Mgmt. Corporation*
*Hamilton v. Educational Credit Management Corporation*
*Halverson vs. ECMC*
*Bruner-Halteman v. ECMC*

Bankruptcy has been a haven for respondents *(ECMC) against petitioner* with a Judge and a Chapter 13 Trustees assistance.

Armed with an attorney and opportunity to present case with jury trial, or not, petitioner can win against respondents on the merits.

Petitioner deserves her day in court, and respondents deserve to have to defend its position in open court, for actions that occurred in petitioners year 2016 and 2018 bankruptcy, thus, *reason for granting the writ petition, and petitioner plead that writ of certiorari is* ***granted***.

## CONCLUSION

The petition for writ of certiorari should be granted

Respectfully submitted,

Theresa Marshall

Date: 6/19/23