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Bankruptcy Preemption of Malicious Prosecution Actions: *Cogan v. Trabucco*

Alyssa Knecht

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BANKRUPTCY PREEMPTION OF MALICIOUS PROSECUTION ACTIONS: *COGAN V. TRABUCCO*

Alyssa Knecht†

This Note examines jurisdiction over state torts that arise during a bankruptcy proceeding. Recently, the Ninth Circuit permitted a collateral attack on a state court judgment regarding malicious prosecution in Cogan v. Trabucco*. The Ninth Circuit held that federal courts have exclusive jurisdiction over malicious prosecution actions and that abuse of process state torts are completely preempted by federal law. This decision left the debtor without any redress and divested state courts of jurisdiction over cases under its own tort law. This Note argues the Ninth Circuit, in* Cogan*, erroneously made "related to" jurisdiction exclusive and incorrectly held that federal law completely preempts state abuse of process laws. This Note further argues the Ninth Circuit abandoned its own modern preemption test which deepened a circuit split between the Third Circuit and Seventh Circuit. Finally, this Note argues that the* Rooker-Feldman *doctrine does apply in* Cogan.

† Articles Editor (Vol. 47), *Cardozo Law Review*; J.D. Candidate (May 2026), Benjamin N. Cardozo School of Law; B.B.A., Walla Walla University (2023). I would like to extend my enormous gratitude to my Note Advisor, Professor David G. Carlson, for his patience and invaluable feedback as I developed this Note. I also want to thank Elizabeth Bulat, Julia Ferro, and the incoming *de•novo* team for their thoughtful review and edits. Finally, I am grateful for my family and friends who supported me through this process.

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INTRODUCTION

The right of redress is fundamental in law. In fact, there is a presumption against complete preemption in favor of state laws that provide redress.[1] Yet, the Ninth Circuit collaterally attacked a state court judgment and held that a state abuse of process tort was completely preempted by the Bankruptcy Code.[2] This deprived a debtor of redress.[3]

In *Cogan v. Trabucco*, a doctor who committed malpractice filed for bankruptcy.[4] Generally, negligent torts are dischargeable in bankruptcy.[5] The creditors and their lawyer, however, commenced an adversary proceeding to deny the discharge on the ground that the malpractice was a willful and malicious tort.[6] The bankruptcy court awarded the debtor a discharge.[7] About four years later, the debtor sued the creditor's attorney for abuse of process and prevailed in Arizona state court.[8] The creditor's attorney commenced a collateral attack on the Arizona state judgment in federal court.[9] Initially, the district court denied relief on the collateral attack, but the Ninth Circuit reversed.[10] Finding that the *Rooker-Feldman* doctrine does not apply, the Ninth Circuit ruled that the Arizona state court had no jurisdiction to decide the abuse of process claim.[11] Admittedly, federal courts have "related to" jurisdiction over the tort actions, but "related to" jurisdiction is not exclusive, and state courts can also take jurisdiction of such cases.[12] In effect, the Ninth Circuit's ruling

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1 John C. P. Goldberg, *The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs*, 115 YALE L.J. 524, 588 (2005).

2 *See, e.g.*, Cogan v. Trabucco, 114 F.4th 1054, 1067 (9th Cir. 2024).

3 *See id.*; *see also infra* Section III.B (explaining the debtor is left without a remedy).

4 *Cogan*, 114 F.4th at 1057.

5 Kawaauhau v. Geiger, 523 U.S. 57, 64 (1998); *see generally* 11 U.S.C. § 523(a)(6) (noting that only "willful and malicious injur[ies]" are exceptions to discharge). A bankruptcy discharge is issued by a court at the end of the bankruptcy proceeding that releases a debtor from paying the discharged debts. *Discharge in Bankruptcy–Bankruptcy Basics*, U.S. COURTS, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics [https://perma.cc/JMJ8-WUAG] (last visited Feb. 24, 2026).

6 *Cogan*, 114 F.4th at 1057–58. An adversary proceeding is a contested matter that is listed in the Bankruptcy Code and litigated within the bankruptcy action. 4B Fed. Proc. Forms § 9B:994.

7 *Cogan*, 114 F.4th at 1058.

8 *Id.* at 1058–59.

9 *Id.* at 1059. A collateral attack is where the losing party in a subsequent judicial proceeding attacks the judgment of a case. RESTATEMENT (FIRST) OF JUDGMENTS § 11 (A.L.I. 1942).

10 *Cogan*, 114 F.4th at 1059, 1065.

11 *Id.* at 1065. The *Rooker-Feldman* doctrine prevents a district court from exercising appellate review over a state court decision. *See infra* Section II.C.

12 *See* 28 U.S.C. § 1334(b):

> Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the

prevents plaintiffs from seeking redress where they want and prevents state courts from taking jurisdiction over their own abuse of process tort claims when the process abused was within federal bankruptcy jurisdiction.[13]

Bankruptcy Code § 524(a)(2), the "discharge injunction," prohibits prepetition creditors from collecting discharged debt.[14] This has been interpreted as denying state courts jurisdiction to decide whether a debt has been discharged in a prior bankruptcy proceeding.[15] If a state court rules that a claim has not been discharged, the debtor may collaterally attack the state decision in a federal bankruptcy court.[16] The Ninth Circuit's error is supposing that the discharge injunction bars a discharged debtor from filing a complaint in state court for abuse of process arising out of a bankruptcy case against a third-party noncreditor.[17] The discharge injunction is supposed to protect, not punish the debtor.[18] Additionally, the Ninth Circuit confused choice of law with choice of jurisdiction.[19] This Case Note will argue this cannot be Congress's intent regarding a discharge injunction; that Congress did not intend for such state abuse of process torts to be completely preempted when there are no adequate federal remedies available.[20] Finally, *Cogan* deepened a circuit split among the Ninth Circuit, Third Circuit, and Seventh Circuit on the issue of complete preemption in bankruptcy.[21]

This Case Note begins in Part I by discussing the facts, procedural history, holding, and concurrence of *Cogan*.[22] Part II provides the necessary background to understand and analyze the Ninth Circuit's reasoning in *Cogan*. Part II first discusses prior law regarding bankruptcy jurisdiction and injunctions and how bankruptcy injunctions developed into jurisdictional principles.[23] Part II then discusses the complete preemption doctrine, the Ninth Circuit's application of the complete preemption doctrine in various cases that the majority relied on in *Cogan*, and how the Third Circuit and Seventh Circuit differ from its application

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district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

13 *See Cogan*, 114 F.4th at 1063–68.

14 11 U.S.C. § 524(a)(2).

15 *See infra* Section II.A.2.

16 *See infra* Section II.A.2.

17 *See Cogan*, 114 F.4th at 1063–68; *id.* at 1071 (Smith, J., concurring) (noting that Cogan was a third party with no stake in the estate).

18 11 U.S.C. § 524(a)(2).

19 *See Cogan*, 114 F.4th at 1066 (finding Trabucco's claim can only arise under federal law only in federal court).

20 *See infra* Section III.B.

21 *Cogan*, 114 F.4th at 1070–71 (Smith, J., concurring).

22 *See infra* Part I.

23 *See infra* Section II.A.

of the complete preemption doctrine in bankruptcy.[24] Finally, Part II examines the *Rooker-Feldman* doctrine and its application in bankruptcy proceedings.[25] Part III analyzes the Ninth Circuit's reasoning in *Cogan* by applying the necessary background. Specifically, Part III analyzes how the Ninth Circuit incorrectly applies the logic derived from bankruptcy injunction jurisdiction to abuse of process suits; improperly holds that a debtor's claim is completely preempted; and argues the *Rooker-Feldman* doctrine does indeed apply when a discharged debtor brings a state tort action based on prior bankruptcy litigation.[26]

I. BACKGROUND

A. *Facts and Procedural History*

Arnaldo Trabucco is an Arizonan surgeon who operated on Gerald Scharf in September 2012.[27] Scharf died a few days following his operation.[28] Trabucco, in November 2012, filed a chapter 7 bankruptcy petition in Nevada federal bankruptcy court after experiencing financial troubles.[29] In March 2013, Scharf's estate "filed a malpractice action against Trabucco in Arizona state court."[30] Jeffrey A. Cogan, an attorney, represented the Scharfs in Trabucco's chapter 7 bankruptcy proceeding.[31] Cogan, in May 2013, filed an adversary complaint on behalf of Scharf's estate in the bankruptcy proceeding seeking to prevent the court from discharging the malpractice debt under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6).[32] He alleged that Trabucco committed "willful and malicious injury" while operating on Scharf.[33] In February 2014, the parties agreed to a stipulation dismissing the adversary complaint in the bankruptcy

24 *See infra* Section II.B.

25 *See infra* Section II.C.

26 *See infra* Part III.

27 Cogan v. Trabucco, 114 F.4th 1054, 1057 (9th Cir. 2024).

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.* at 1057–58. The Scharfs' estate malpractice action was still pending in Arizona state court at this time. *Id.*

33 *Id.* at 1058; *see also* Trabucco v. Cogan, No. 1 CA-CV 18-0526, 2020 WL 3250860, at *2 (Ariz. Ct. App. Apr. 7, 2020) (outlining the specific allegations in the complaint). Cogan later admits that he accused Trabucco of willful and malicious injury because it was the only way to prevent the bankruptcy court from discharging the debt. *Id.* at *6; *see also* Scott F. Norberg, *Contract Claims and the Willful and Malicious Injury Exception to the Discharge in Bankruptcy*, 88 AM. BANKR. L.J. 175, 190–91 (2014) (explaining that the exceptions to discharge only covers intentional torts and thus conduct like negligence is often dischargeable).

proceeding.[34] Trabucco then sued "Cogan and the Scharfs in Arizona state court, alleging that the filing of the adversary complaint constituted malicious prosecution, abuse of process, and intentional infliction of emotional distress."[35]

With the bankruptcy proceeding and medical malpractice cases concluded, all that remained was Trabucco's malicious prosecution action against Cogan and the Scharfs.[36] In January 2018, the Arizona state court awarded Trabucco summary judgment for malicious prosecution and abuse of process.[37] There was a trial for damages and the jury awarded Trabucco $8,000,000 in damages.[38] Cogan appealed and the Arizona Court of Appeals affirmed summary judgment for malicious prosecution but reversed the abuse of process claim, vacated the damages, and remanded for a new trial to determine the damages solely for malicious prosecution.[39] Cogan appealed and moved to dismiss the case in Arizona Supreme Court, arguing the Arizona state court lacked subject matter jurisdiction because the tort occurred in federal bankruptcy court.[40] Without explaining, the Arizona Supreme Court denied the motion to dismiss.[41]

A month before the retrial for damages, Cogan petitioned the Nevada federal district court to prevent the Arizona state court judgment

34 *Cogan*, 114 F.4th at 1058. The stipulation allowed the Scharfs to continue "their previously filed state court malpractice suit." *Id.*

35 *Id.*

36 *Id.* Scharf's estate renewed their medical malpractice claim against Trabucco in the district court of Arizona. *Id.* Despite Trabucco's discharge, the district court allowed the suit to move forward "solely for the purpose of obtaining a recovery from Trabucco's malpractice insurer." *Id.* After trial, the jury returned a verdict for Trabucco in October 2017, and Scharf's estate never appealed the verdict. *Id.*

37 *Id.*; Trabucco v. Cogan, No. B8015CV201404030, 2018 WL 3954396, at *2 (Ariz. Super. Jan. 17, 2018).

38 Verdict, Trabucco v. Cogan, (No. B8015CV201404030), 2018 WL 3953783. The jury found the Scharfs did not owe Defendant any damages, only Cogan did. *Cogan*, 114 F.4th at 1058.

39 *Cogan*, 114 F.4th at 1058–59; *see also* Trabucco v. Cogan, No. 1 CA-CV 18-0526, 2020 WL 3250860, at *10 (Ariz. Ct. App. Apr. 7, 2020):

> For the foregoing reasons, we affirm the finding of liability for malicious prosecution, reverse the finding of liability for abuse of process, vacate the judgment with regard to the damages awarded against Cogan, affirm the judgment with regard to the Scharfs, and remand with directions for the superior court to enter judgment in favor of Cogan as to liability on the abuse of process claim only and, as consistent with this decision, for a new trial on the issue of damages arising out of Cogan's malicious prosecution of Dr. Trabucco in the bankruptcy proceedings.

40 *Cogan*, 114 F.4th at 1059.

41 *Id.* ("[T]he Arizona Supreme Court issued an order denying, without explanation, both Cogan's motion to dismiss and Trabucco's petition for review.").

from taking effect.[42] He specifically argued that Arizona state court lacked subject matter jurisdiction for conduct that arose out of the federal bankruptcy proceeding, and therefore, the judgment for malicious prosecution must be declared void.[43] The Nevada district court dismissed Cogan's suit, stating it was barred under the *Rooker-Feldman* doctrine.[44] Cogan appealed to the Ninth Circuit Court of Appeals.[45]

B. *Holding*

The Ninth Circuit Court of Appeals reversed and remanded the decision.[46] First, the Ninth Circuit held the proceedings were not moot.[47] The Ninth Circuit then held the *Rooker-Feldman* doctrine does not apply because the malicious prosecution action falls within the federal courts' exclusive jurisdiction, and thus, Arizona's state court decision is subject to collateral attack.[48] Furthermore, the Ninth Circuit also found that Trabucco's state tort claim is completely preempted by federal law.[49]

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42 *Id.* ("Less than one month before the scheduled retrial of the malicious prosecution action in Arizona state court, Cogan filed this suit in Nevada federal court seeking to collaterally challenge that action.").

43 *Id.* ("Cogan argued that any claim for malicious prosecution arising solely from conduct occurring in a federal bankruptcy proceeding was exclusively within the jurisdiction of the federal courts and that, as a result, any judgment in the Arizona malicious prosecution action was void.").

44 *Id.* at 1060. According to the *Rooker-Feldman* doctrine, a bankruptcy court is bound to accept the state court judgment, even though the state judgment has not yet been appealed. *See infra* Section II.C.

45 *Cogan*, 114 F.4th at 1060.

46 *Id.* at 1068.

47 *Id.* at 1063. On the day the Arizona malicious prosecution damages trial was set to begin, Cogan and Trabucco entered a settlement. *Id.* at 1059. The settlement effectively either reinstated the $8,000,000 judgment from the Arizona trial court, or if Trabucco succeeded in Cogan's Nevada federal suit, then Cogan would pay Trabucco the same amount. *Id.* at 1059–60. Trabucco argued that this settlement rendered Cogan's federal suit moot. *Id.* at 1060. Disagreeing, the court explained that the settlement did not cover Cogan's entire suit because he was asking the court to declare the judgment from Arizona Court of Appeals "*void ab inito*." *Id.* Declaring a judgment void would provide a relief and was thus not moot. *Id.* at 1060–61. The court explained that the settlement the parties entered effectively meant that Trabucco either gets the damages from the Arizona state court judgment, or if Trabucco won, then Cogan would owe him the money agreed to in the settlement, and thus the liability was in line with precedent. *Id.* The court did not agree with Trabucco and found that his argument that a judgment from a district court finalizes the rights of the settlement with no avenue for appeal "unreasonable and would lead to absurd results." *Id.* at 1063. Thus, the majority held the proceedings were not moot. *Id.*

48 *Id.* at 1065 ("Cogan contends that Trabucco's malicious prosecution action is within the exclusive jurisdiction of the federal courts; that any judgment in that case is therefore subject to collateral attack in federal court; and that *Rooker-Feldman* thus does not bar this suit. We agree."). The majority also relied on *Gonzales v. Parks* to find they could collaterally attack the state court judgment. *Id.* at 1065, 1067; *see* Gonzales v. Parks, 830 F.2d 1033, 1036 (9th Cir. 1987).

49 Cogan, 114 F.4th at 1066–67.

Cogan argued that the *Rooker-Feldman* doctrine does not apply because he filed for review in district court a month before the damages trial was set to begin, and thus, there was no final judgment barring review.[50] Cogan also argued the malicious prosecution suit was within the bankruptcy court's exclusive jurisdiction, and therefore the court could collaterally attack the state court judgment.[51] Relying on its opinion in *Henrichs v. Valley View Development*, the Ninth Circuit explained that state court judgments can be collaterally attacked when federal courts are deemed to have exclusive jurisdiction, and thus *Rooker-Feldman* does not apply.[52] Trabucco argued the Arizona Supreme Court's denial of Cogan's appeal to dismiss on jurisdictional grounds should have been construed to have reached the merits of the issue.[53] However, the majority stated that even if the Arizona Supreme Court's dismissal was a final judgment, this particular state law claim is completely preempted by federal law, so the judgment can still be collaterally attacked.[54]

Relying on prior decisions, *MSR Exploration, Ltd. v. Meridian Oil* and *Gonzales v. Parks*, the court reasoned that even if the state court held it has jurisdiction, its decision can still be collaterally attacked if federal

50 *Id.* at 1065; *see also* Appellant's Opening Brief at 5, Cogan v. Trabucco, 114 F.4th 1054 (9th Cir. 2024) (No. 22-16948) (noting Cogan's argument in the opening brief that there was no final judgment and thus *Rooker-Feldman* does not bar review). The *Rooker-Feldman* doctrine prevents state-court losers from asking a federal court to exercise appellate jurisdictional review to address the state-court judgment. *See* notes 201–203 and accompanying text.

51 *Cogan*, 114 F.4th at 1065; *see also* Appellant's Opening Brief at 9–10, Cogan v. Trabucco, 114 F.4th 1054 (9th Cir. 2024) (No. 22-16948) (noting Cogan's exclusive jurisdiction argument in the opening brief).

52 *Cogan*, 114 F.4th at 1065 (citing Henrichs v. Valley View Dev., 474 F.3d 609, 614 (9th Cir. 2007)). In *Henrichs*, there was a property dispute between Henrichs and Valley View. *Henrichs*, 44 F.3d at 612. Henrichs lost in state court and decided to file a suit in district court seeking to void the state court judgment, but the district court held that the claim was barred by *Rooker-Feldman*. *Id.* at 613. The Ninth Circuit agreed and held *Rooker-Feldman* barred the claim because it did not fall within the federal court's exclusive jurisdiction, and thus, could not be collaterally attacked. *Id.* at 13–14.

53 *Cogan*, 114 F.4th at 1059, 1067.

54 *Id.* at 1067. The majority relied on *In re Dunbar* to explain that "Trabucco's argument is foreclosed." *Id.* In this case, the debtors did construction work for the Martins and two years later the debtors filed for chapter 13 but never informed the Martins. *In re* Dunbar, 245 F.3d 1058, 1060 (9th Cir. 2001). The construction work began to break down, so the Martins, after attempts to contact the debtors and an agency complaint, sued the debtors in state court. *Id.* The debtors argued that the suit violated the automatic stay injunction, but the administrative law judge "ruled that the bankruptcy filing did not preclude the state agency's commencement of a disciplinary review of Dunbar's actions as a state licensee." *Id.* The debtors were then required to pay the Martins restitution by the California Contractors' State License Board ("CSLB"). *Id.* at 1061. The debtors then sued CSLB in bankruptcy court to stop the restitution payment and the Martins' civil suit. *Id.* The bankruptcy court held that the decision was collaterally estopped, but the Bankruptcy Appellate Panel vacated and remanded. *Id.* The Ninth Circuit affirmed and held that like in *In re Gruntz*, the automatic stay applies to the *Rooker-Feldman* doctrine. *Id.* at 1063–64.

law preempts the state law claims.[55] The majority determined this area of state law is completely preempted by federal law because the malicious prosecution action concerned Trabucco's nondischargeability action, and a state court adjudicating constituted interference with the bankruptcy process.[56] Furthermore, the majority relied on the complex nature of bankruptcy laws and the available federal remedies to justify Congress's intent to completely preempt state law.[57]

C. *Concurrence*

Judge Milan D. Smith Jr., concurring, indicated that the Ninth Circuit's decision in *Cogan* as well as in *MSR Exploration* may not meet the Ninth Circuit's modern test for complete preemption in *Saldana v. Glenhaven Healthcare LLC*, which requires that federal law supply a substitute cause of action.[58] Notably, Judge Smith was unsure that Bankruptcy Code § 105 and Rule 9011 of the Federal Rules of Bankruptcy Procedure sufficed to justify complete preemption of state malicious prosecution, especially involving an attorney who is a third-party with no interest in the bankruptcy proceeding.[59] Judge Smith

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55 *Cogan*, 114 F.4th at 1066–67.

56 *Id.*

> Trabucco's malicious prosecution claim against both the Scharfs and their lawyer thus directly implicates *MSR*'s concern that "[t]he threat of later state litigation may well interfere with the filings of claims *by creditors* and with other necessary actions that they, *and others*, must or might take within the confines of the bankruptcy process." (emphasis added) (quoting MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 916 (9th Cir. 1996)).

57 *Id.* (citing *MSR Expl.*, 74 F.3d at 914).

58 *Id.* at 1071 (Smith, J., concurring) (noting the modern preemption test in *Saldana v. Glenhaven Healthcare LLC*).

59 *Id.*

> I am skeptical that 11 U.S.C. § 105 and Rule 9011 of the Federal Rules of Bankruptcy Procedure would satisfy the modern test for completely preempting state-law malicious prosecution claims for events taking place within bankruptcy proceedings (especially when those claims are brought against third-party attorneys, like Cogan, who never had any personal claims to assert against the estate.

11 U.S.C. § 105 gives a bankruptcy judge the necessary power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate . . . to prevent an abuse of process." 11 U.S.C. § 105(a). Rule 9011 of the Federal Rules of Bankruptcy Procedure gives a bankruptcy judge the power to issue sanctions for, but not limited to, frivolous arguments. FED. R. BANKR. P. 9011(c).

perceived a circuit split with the Third Circuit and Seventh Circuit regarding complete preemption.[60]

Addressing the *Rooker-Feldman* doctrine, Judge Smith strongly asserted that the Ninth Circuit's decision in *Henrichs* is inconsistent with the Supreme Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp*.[61] In *Exxon Mobil Corp.*, the Supreme Court held that *Rooker-Feldman* does not apply when Congress has explicitly given district courts the power to review state court judgments.[62] However, in *Henrichs*, the Ninth Circuit held that *Rooker-Feldman* does not apply when the federal courts have exclusive jurisdiction.[63] Judge Smith believed that inferring congressional authorization is significantly different from express authorization from Congress, which the Supreme Court requires.[64]

Judge Smith ultimately concurred because he did not believe *MSR Exploration* is completely at odds with the Supreme Court's decision in *Beneficial National Bank v. Anderson*, and explained that without an en banc reconsideration, *MSR Exploration*'s broad holding still applied.[65]

II. DISCUSSION OF PRIOR LAW

Part II discusses the various doctrines and cases the majority relied on in *Cogan*. First, Part II examines the three main types of bankruptcy jurisdiction, the two automatic injunctions granted in every bankruptcy proceeding, and how injunctions have been used as justification for exclusive jurisdiction in bankruptcy courts.[66] Next, Part II examines the complete preemption doctrine, specifically the approach the Ninth Circuit took, which the concurrence raised; the cases the Ninth Circuit relied on

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60 *Cogan*, 114 F.4th at 1070 (Smith, J., concurring). Judge Smith discussed how the Third Circuit and Seventh Circuit have notably declined to apply the Ninth Circuit's decision in *MSR Exploration* to cases within its jurisdiction. *Id.* Specifically, the Third Circuit declined to agree with the Ninth Circuit that 11 U.S.C. § 303(i) completely preempts state law and similarly, the Seventh Circuit declined to find complete preemption because the Bankruptcy Code did not provide express remedies. *Id.*

61 *Id.* at 1069.

62 *Id.* (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 294 n.8 (2005)).

63 *Id.* (quoting Henrichs v. Valley View Dev., 474 F.3d 609, 614 (9th Cir. 2007)).

64 *Id.* (citing *Exxon Mobil Corp.*, 544 U.S. at 294 n.8). Nevertheless, Judge Smith writes that because of *Henrichs*, "Cogan may proceed with his endeavor despite his failure to identify any statutory provision in his complaint showing that Congress explicitly authorized such a maneuver." *Id.* at 1070.

65 *Id.* at 1071. *Beneficial National Bank v. Anderson* is the leading Supreme Court decision concerning complete preemption. Anthony Salzetta, *Unpuzzling Complete Preemption:* Beneficial National Bank v. Anderson *After Two Decades in the Circuit Courts*, 42 PACE L. REV. 319, 321 (2023).

66 *See infra* Section II.A.

in *Cogan* to hold the abuse of process suit is completely preempted; and the circuit split that has arisen from the application of complete preemption in bankruptcy cases.[67] Finally, Part II discusses the *Rooker-Feldman* doctrine and its application in the Bankruptcy Code.[68]

A. Bankruptcy Jurisdiction and Injunctions

The Bankruptcy Code grants the federal courts extensive jurisdiction over bankruptcy cases to ensure uniformity and protection of debtors and creditors.[69] The broad jurisdiction and powerful injunctions that arise automatically are one of the many reasons individuals choose to file for bankruptcy in federal court.[70]

1. Three Main Types of Jurisdictions in Federal Bankruptcy Courts

There are three main types of federal bankruptcy jurisdiction: original jurisdiction, "arising under" jurisdiction, and "related to" jurisdiction.[71] Section 1334(a) of Title 28 sets out original jurisdiction as, "except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11" of the Bankruptcy Code.[72] That is to say, federal bankruptcy courts have exclusive jurisdiction over bankruptcy petitions.[73] "Arising under" jurisdiction is defined in § 1334(b), stating "the district courts shall have original but not exclusive jurisdiction of all civil proceedings *arising under* title 11."[74] "Arising under" jurisdiction applies to those proceedings that go to the core of bankruptcy matters, meaning that

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67 *See infra* Section II.B.

68 *See infra* Section II.C.

69 *See* H.R. DOC. NO. 93-137, pt.1, at 4, 90–91 (1973); H.R. REP. NO. 95-595, at 4–5 (1977); *see also* E. Scott Fruehwald, *The Related to Subject Matter Jurisdiction of Bankruptcy Courts*, 44 DRAKE L. REV. 1, 2 (1995) (arguing "bankruptcy courts need broad jurisdiction that is defined by their functions"); MICHAEL D. CONTINO, CONG. RSCH. SERV., R45137, BANKRUPTCY BASICS: A PRIMER 17 (2022) (explaining the uniform Bankruptcy Code provides debtors with a discharge that gives them a "fresh start").

70 *See* Teresa M. Schreffler & Honorable Janice Miller Karlin, *Walking the Balance Beam of the Bankruptcy Code's Discharge Injunction*, 87 J. KAN. B. ASS'N 38, 38 (2018).

71 28 U.S.C. § 1334; Jack Zarin-Rosenfeld, *Designing Related-To Bankruptcy Jurisdiction*, 89 N.Y.U. L. REV. 390, 393 (2014).

72 28 U.S.C. § 1334(a).

73 28 U.S.C. § 1334(e)(1) (granting exclusive jurisdiction over property and the estate); Rafael Ignacio Pardo, *Bankruptcy Court Jurisdiction and Agency Action: Resolving the* NextWave *of Conflict*, 76 N.Y.U. L. REV. 945, 947–48 (2001) (explaining that once a petition is filed, the automatic stay is implemented and it "depends on a jurisdictional grant of authority that permits its enforcement").

74 28 U.S.C. § 1334(b) (emphasis added).

without the Bankruptcy Code, those rights would not exist.[75] For example, a bankruptcy trustee's adversary proceeding to recover a fraudulent transfer under § 548(a)(1) from a third party fits an action "arising under title 11."[76] "Related to" jurisdiction is broader than "arising under" jurisdiction.[77] The matter is not found in the Bankruptcy Code but is "related to" a title 11 case that warrants bringing it into a bankruptcy district court.[78] Congress set out "related to" jurisdiction in 28 U.S.C. § 1334(b), stating "the district courts shall have original but not exclusive jurisdiction of all civil proceedings . . . *related to* cases under title 11."[79]

Due to the vast circumstances and complexity of bankruptcy law, it is difficult to establish a test for "related to" jurisdiction because an issue may fall under "related to" jurisdiction in one bankruptcy case, but not in another.[80] The Supreme Court has adopted the Third Circuit's approach to "related to" jurisdiction in *Pacor v. Higgins*.[81] The Court acknowledged that "related to" jurisdiction is not limitless but must be wide enough to efficiently address the matters that go into the bankruptcy estate.[82] The test from *Pacor* has been widely recognized, at least in the abstract, but there remains a debate regarding the specific issues that fall under "related to" jurisdiction.[83] The Ninth Circuit in particular has held

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75 HON. JOAN N. FEENEY & MICHAEL J. STEPAN, 1 BANKRUPTCY LAW MANUAL § 2:7 (5th ed. 2025); *In re* Harris, 590 F.3d 730, 736–37 (9th Cir. 2009) (emphasizing that "arising under" jurisdiction is for core bankruptcy issues, and thus bankruptcy judges have constitutional limits); Schultze v. Chandler, 765 F.3d 945, 948 (9th Cir. 2014) (reiterating that "arising under" jurisdiction addresses rights connected to bankruptcy laws); *see, e.g.*, *In re* Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995) (explaining that "arising under" jurisdiction concerns itself with causes of action that are derived from the Bankruptcy Code itself (citing *In re* Wood, 825 F.2d 90, 96–97 (5th Cir. 1987))).

76 28 U.S.C. § 1334(b). *See generally* 11 U.S.C. § 548(a)(1) (providing the mechanism to avoid fraudulent transfers).

77 ELIZABETH M. BOSEK ET AL., 2 CYCLOPEDIA OF FEDERAL PROCEDURE § 2:429 (3rd ed. 2026).

78 ALEXA ASHWORTH ET AL., 5 FEDERAL PROCEDURE, LAWYERS EDITION § 9:391 (2026).

79 28 U.S.C. § 1334(b) (emphasis added).

80 Zarin-Rosenfeld, *supra* note 71, at 391–92.

81 Celotex Corp. v. Edwards, 514 U.S. 300, 308 (1995). In *Pacor*, the Third Circuit explained that "related to" jurisdiction regards any matters that have a connection, or a nexus, to the bankruptcy proceeding. Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984). Without a nexus between the civil proceeding and the bankruptcy proceeding, courts cannot exercise "related to" jurisdiction. *Id.* The test laid out by the court asks, "whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*." *Id.*

82 *Celotex*, 514 U.S. at 308 (explaining that Congress intended related to jurisdiction to "deal efficiently and expeditiously with all matters connected with the bankruptcy estate" (quoting *Pacor*, 743 F.2d 984 at 994)).

83 Zarin-Rosenfeld, *supra* note 71, at 392.

that "related to" jurisdiction is very broad.[84] Thus, "related to" jurisdiction continues to be applied divergently in the circuit courts.[85]

2. Bankruptcy Injunctions

Bankruptcy law entails "automatic" injunctions: the automatic stay and discharge injunction.[86] These are automatic in the sense that the injunctions exist without a specific court order.[87] To further understand the Ninth Circuit's decision in *Cogan*, the two bankruptcy injunctions must be further explored.

The automatic stay injunction protects the debtor from creditor collections while in bankruptcy proceedings.[88] It provides that actions listed under § 362(a) are halted or stayed during the bankruptcy proceeding.[89] By case law, actions that violate the automatic stay injunction holds are void.[90] Therefore, when a court purports to enter a judgment in violation of the automatic stay, the judgment is void.[91] Such state court judgments can be collaterally attacked. It is appropriate to conclude that a court acting in violation of the automatic stay is

84 *In re* Sasson, 424 F.3d 864, 868–69 (9th Cir. 2005). In fact, the Ninth Circuit seems to take "related to" jurisdiction and make it exclusive in *Cogan*. *See* Cogan v. Trabucco, 114 F.4th 1054, 1065–67 (9th Cir. 2024). But the majority went beyond the jurisdictional question and held that malicious prosecution actions that occur in the bankruptcy proceedings "are completely preempted by federal law." *See id.* at 1066 (quoting MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 912 (9th Cir. 1996)); *see also* discussion *infra* Section II.B.2 (discussing the Ninth Circuit's application of complete preemption in bankruptcy).

85 *See infra* Section II.B.

86 *See generally* 11 U.S.C. §§ 362(a) (providing that once a petition is filed, the automatic stay becomes applicable), 524(a) (explaining that a discharge is an injunction that prevents certain actions and voids judgments taken in violation of the discharge).

87 *In re* Gruntz, 202 F.3d 1074, 1081–82 (9th Cir. 2000) ("The automatic stay is self-executing, effective upon the filing of the bankruptcy petition.").

88 *See* 11 U.S.C. § 362(a)(1). It also protects creditors by preventing other creditors from attempting to collect from the limited funds. Julia Kagan, *Automatic Stay: What It is, How It Works, Example*, INVESTOPEDIA (Mar. 26, 2024), https://www.investopedia.com/terms/a/automaticstay.asp [https://perma.cc/K7W4-ZN7V].

89 11 U.S.C. § 362(a); *In re* Gruntz, 202 F.3d at 1081–82 ("The automatic stay is self-executing, effective upon the filing of the bankruptcy petition."); Kagan, *supra* note 88 (noting that the automatic stay remains in place until the bankruptcy proceeding is concluded).

90 *See, e.g.*, *In re* Schwartz, 954 F.2d 569, 570–72 (9th Cir. 1992) (holding that automatic stay violations are considered void as Congress's intent was not to burden litigants with unlawful claims); Hillis Motors, Inc. v. Haw. Auto. Dealers' Ass'n, 997 F.2d 581, 585–86 (9th Cir. 1993) (explaining that actions are void when violating the automatic stay); *In re* Gruntz, 202 F.3d at 1082 (noting that the automatic stay injunction is not subject to collateral attack by state courts).

91 *Hillis Motors*, 997 F.2d at 586 ("[A]ctions taken in violation of the automatic stay are void rather than voidable.").

essentially acting without jurisdiction.[92] Thus, the automatic stay injunction turns out to be a jurisdictional principle.[93] The automatic injunction provides an avenue for a district court to collaterally attack a state court judgment for lack of jurisdiction.[94]

The lesser-known automatic injunction is the discharge injunction which essentially provides, "thou shall not collect from the discharged debtor."[95] Prior to the Bankruptcy Code, there was no automatic discharge injunction.[96] Instead, discharge was a defense to a cause of action:[97] if you did not plead it, you waived it.[98] In 1978, Congress decided discharge under Bankruptcy Code § 524(a) should prohibit any actions taken on discharged debt irrespective of whether the debtor waived it.[99] The discharge injunction takes the same approach as the automatic stay injunction;[100] it automatically protects the debtor from creditors collecting prepetition debts that have been discharged.[101] By analogy to the case law under the automatic stay, discharge automatically renders any future judgments by either state or federal courts "null and void" as it concerns discharged debts.[102] The discharge injunction essentially allows federal courts to ignore a state court judgment pertaining to discharge, which is in tension with the full faith and credit

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92 Benjamin Margulis, *The Bankruptcy Hegemon: Section 524(a) and Its Effect on State and Federal Comity*, 31 CARDOZO L. REV. 905, 920 (2010).

93 *See id.*

94 *In re* Gruntz, 202 F.3d at 1082–83 ("A bankruptcy court simply does not conduct an improper appellate review of a state court when it enforces an automatic stay that issues from its own federal statutory authority.").

95 *See, e.g.*, 11 U.S.C. § 524.

96 *See* Leon R. Yankwich, *The Impact of the Federal Rules of Civil Procedure on Bankruptcy*, 42 CAL. L. REV. 738, 738–739 (1954) (explaining that the Supreme Court reads the Federal Rules of Civil Procedure into bankruptcy procedure with certain modifications that allow the bankruptcy proceedings to be conducted in an expedient manner).

97 *See* FED. R. CIV. P. 12(h); *see also* Hon. Christopher M. Klein, *Bankruptcy Rules Made Easy: A Guide to the Federal Rules of Civil Procedure That Apply in Bankruptcy*, 70 AM. BANKR. L.J. 301, 311 n.52 (1996) (explaining that Rule 12(h) applies in bankruptcy proceedings).

98 FED. R. CIV. P. 12(h).

99 11 U.S.C. § 524(a)(1) ("A discharge in a case under this title voids any judgment at any time obtained . . . with respect to any debt discharged . . . whether or not discharge of such debt is waived.").

100 11 U.S.C. § 524(a)(2):

> A discharge in a case under this title operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

101 Margulis, *supra* note 92, at 906.

102 *Id.* at 915, 918; *see also* cases cited *supra* note 90 (listing cases where courts have held judgments void).

principle.[103] Specifically, the Ninth Circuit held that it has exclusive jurisdiction over the discharge injunction and that state courts lack subject matter jurisdiction to decide whether a debt has been discharged under § 524(a).[104] If a judgment is rendered by a state court or even a federal diversity or "federal question" court, it is subject to collateral attack.[105]

The leading Ninth Circuit decision that addressed the jurisdictional issues with discharge injunctions is *In re McGhan*.[106] In this case, McGhan was convicted for lewd and lascivious acts under California Penal Code § 288(a) after sexually molesting his twelve-year-old stepson, Rutz.[107] McGhan filed for chapter 7 bankruptcy and listed Rutz as one of the creditors, and Rutz's mother received the notice.[108] The mother, however, failed to bring an adversary proceeding objecting to a discharge for Rutz.[109] While willful and malicious injury claims are potentially not dischargeable, they are nevertheless discharged if the creditor fails to object.[110] When Rutz was an adult, he sued McGhan for damages in state court.[111] The state court held it had jurisdiction to review the notice Rutz received and determined that it was inadequate.[112] McGhan subsequently mounted a collateral attack on the state court discharge ruling.[113] McGhan argued that the bankruptcy court had exclusive jurisdiction to determine whether he was discharged.[114] The

103 Margulis, *supra* note 92, at 906–07; U.S. CONST. art. IV, § 1. 28 U.S.C. § 1738, for example, explains that judicial proceedings "shall have the same full faith and credit in every court within the United States." 28 U.S.C. § 1738.

104 *In re* Gruntz, 202 F.3d 1074, 1079 (9th Cir. 2000).

105 Margulis, *supra* note 92, at 906 (explaining that federal courts can void state court judgments concerning § 524); *see, e.g.*, Cogan v. Trabucco, 114 F.4th 1054, 1066 (9th Cir. 2024) (citing MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 916 (9th Cir. 1996)); *see also* Fruehwald, *supra* note 69, at 2 (recognizing the broad subject matter jurisdiction and how it differs from federal question jurisdiction and diversity jurisdiction). Diversity jurisdiction provides a basis for federal court jurisdiction over citizens from different states that meet the minimum controversy amount. *Diversity of Citizenship*, BLACK'S LAW DICTIONARY (12th ed. 2024). Federal question jurisdiction is "[t]he exercise of federal-court power over claims arising under the U.S. Constitution, an act of Congress, or a treaty." *Jurisdiction*, BLACK'S LAW DICTIONARY (12th ed. 2024) (citing 28 U.S.C. § 1331).

106 288 F.3d 1172, 1178–81 (9th Cir. 2002).

107 *Id.* at 1175.

108 *Id.* at 1175–76.

109 *Id.* at 1176.

110 *Id.*

111 *Id.* at 1177. Rutz argued that the state court cannot be bound by the discharge injunction because he never received notice, and since his mother's interests were not aligned with his, the discharge injunction cannot apply. *Id.*

112 *Id.*

113 *Id.*

114 McGhan argued that the bankruptcy court had exclusive jurisdiction and "that Rutz was estopped from collaterally attacking the validity of the discharge order and injunction in state court." *Id.*

Ninth Circuit held that the state court ruling on discharge violated the discharge injunction and "infringed upon the bankruptcy court's jurisdiction to enforce its orders."[115] Thus, the state court did not have jurisdiction to adjudicate whether Rutz was discharged.[116] *In re McGhan* illustrates the discharge injunction operating as a jurisdictional principle.[117]

3. *Gonzales v. Parks*

In *Cogan*, the Ninth Circuit relied on *Gonzales* when they held that they could collaterally attack the malicious prosecution action as it fell under the federal courts' exclusive jurisdiction.[118] In *Gonzales*, the debtor granted a deed of trust to a creditor, then defaulted, and the creditor sought to foreclose on the debtor's house.[119] The debtor then filed a chapter 11 bankruptcy action and the creditor filed a complaint in California state court alleging that filing a bankruptcy petition was an abuse of process; the state court entered a default judgment against the debtor.[120] The debtor then sought to vacate the state court judgment in federal bankruptcy court.[121] The district court voided the state court judgment for infringing on the automatic stay injunction.[122] The Ninth Circuit affirmed, explaining that Congress intended for federal courts to have exclusive jurisdiction over bankruptcy petitions.[123] Allowing a state court authority to determine if a bankruptcy filing was frivolous, they said, would affect the uniformity of bankruptcy proceedings.[124] Additionally, Congress provides remedies for frivolous filings which further supports the exclusive jurisdiction.[125] *Gonzales* reaffirmed that federal bankruptcy courts have exclusive jurisdiction over automatic stay injunctions and state court judgments that violate it are void.

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115 *Id.* at 1180.

116 *Id.* at 1178–80.

117 *See* Margulis, *supra* note 92, at 921–23.

118 Cogan v. Trabucco, 114 F.4th 1054, 1065 (9th Cir. 2024).

119 Gonzales v. Parks, 830 F.2d 1033, 1033 (9th Cir. 1987).

120 *Id.* at 1033–34. Once a bankruptcy petition is filed, the injunctions are automatically applied. *See supra* note 87 and accompanying text.

121 *Gonzales*, 830 F.2d at 1034.

122 *Id.*

123 *Id.* at 1034–36.

124 *Id.* at 1035–36.

125 *Id.* at 1036 ("Congress' authorization of certain sanctions for the filing of frivolous bankruptcy petitions should be read as an implicit rejection of other penalties, including the kind of substantial damage awards that might be available in state court tort suits.").

B. *Federal Complete Preemption*

The Bankruptcy Code is capable of completely preempting state law, but complete preemption is a matter of congressional intent.[126] Complete preemption is a doctrine that contends that a state law claim is so federal in nature that Congress intended it arise only in federal court under federal law.[127] This means that when a state law claim is completely preempted, the federal substantive law now applies instead of state law.[128] The leading Supreme Court case on complete preemption is *Beneficial National Bank v. Anderson* where the Court held the plaintiff's claims were so federal in nature that state law was completely preempted.[129] The Court explained there are two situations where a state law claim is barred because of complete preemption: (1) when Congress has expressly declared it is preempted or (2) when federal law completely displaces state law.[130] There are three areas of federal law that the Supreme Court has explicitly held completely preempts state law: the Employee Retirement Income Security Act, the Labor and Management Relations Act, and the National Bank Act.[131] Thus, to apply the complete preemption doctrine to other areas of state laws, courts must first determine congressional intent.[132] Congressional intent is often determined based on the language in the statute, whether federal law provides a cause of action, and whether federal law replaces state law.[133]

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126 Oleksandra Johnson, *The Bankruptcy Code as Complete Preemption: The Ultimate Trump?*, 81 AM. BANKR. L.J. 31, 37 (2007).

127 JAMES T. O'REILLY, FEDERAL PREEMPTION OF STATE AND LOCAL LAW 11 (2006) ("The complete-preemption doctrine provides that a state-law claim becomes a federal question, and the case is removed to federal court, when Congress intends that a federal statute completely preempt the applicable field of law.").

128 *See* Johnson, *supra* note 126, at 37–38; *see* Ryan Jain-Liu, *Complete Preemption via Historical Evolution*, 92 U. CHI. L. REV. 2061, 2063 (2025) ("When a federal court finds that a federal statute completely preempts state law claims, those state law claims effectively cease to exist.").

129 539 U.S. 1, 11 (2003) (holding that even though the plaintiff only alleged state law causes of actions, the claims arise solely under federal law).

130 *Id.* at 8:

> Thus, a state claim may be removed to federal court in only two circumstances—when Congress expressly so provides . . . or when a federal statute wholly displaces the state-law cause of action through complete pre-emption. . . . [T]he federal statutes at issue provide[] the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action.

131 Johnson, *supra* note 126, at 33 n.5 (quoting Elizabeth Helmer, Comment, *The Ever-Expanding Complete Preemption Doctrine and the Copyright Act: Is This What Congress Really Wanted?*, 7 N.C. J. L. & TECH. 205, 208 (2005)).

132 *Id.* at 56–57.

133 *Id.* at 59:

Without much guidance from the Supreme Court, lower federal courts have been left to create their own tests regarding complete preemption.[134] Specifically, the Ninth Circuit created its own modern complete preemption test in *Saldana v. Glenhaven Healthcare LLC*: (1) whether Congress intended to supersede state law and (2) whether Congress provided an alternative cause of action.[135] Over the years, the Ninth Circuit held the Bankruptcy Code has completely preempted certain areas of state law.[136] However, the circuit courts are split on whether state tort claims, particularly abuse of process, are preempted by the Bankruptcy Code.[137] For example, the Ninth Circuit found complete preemption in its leading case, *MSR Exploration*,[138] and reemphasized its decision in *Cogan*.[139] The Third Circuit and Seventh Circuit disagree with the Ninth Circuit and have held that state tort claims are not preempted by federal law.[140]

1. State Tort Actions in *Cogan*

Congress has not expressly preempted the various state abuse of process claims in bankruptcy; nonetheless, the majority in *Cogan* held complete preemption.[141] Trabucco's complaint alleged abuse of process

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> Courts attempting to systematize complete preemption analysis . . . identified several questions relevant to the analysis: (1) whether the state claim is displaced by federal law under an ordinary preemption analysis; (2) whether the federal statute provides a cause of action; (3) what kind of jurisdictional language exists in the federal statute; and (4) what kind of language is present in the legislative history to represent Congress's intentions.

134 *See id.* at 33.

135 Cogan v. Trabucco, 114 F.4th 1054, 1071 (9th Cir. 2024) (Smith, J., concurring) (quoting Saldana v. Glenhaven Healthcare LLC, 27 F.4th 679, 687–88 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 444 (2022)) ("(1) [D]id Congress intend to displace a state-law cause of action and (2) did Congress provide a substitute cause of action?"). Specifically, regarding the Bankruptcy Code, the Second Circuit, in a leading decision, emphasized that "[p]reemption is always a matter of congressional intent, even where that intent must be inferred." *In re* Tribune Co. Fraudulent Conv. Litig., 946 F.3d 66, 82 (2d Cir. 2019). The issue in this case was whether 11 U.S.C. § 546(e) completely preempts state-law fraudulent transfers. *Id.* at 77. The court held that once the case was vested in federal bankruptcy law, any fraudulent conveyance action must be brought under federal law. *Id.* at 83. The Bankruptcy Code now governs creditors' rights and state law is completely preempted. *Id.* at 82.

136 Johnson, *supra* note 126, at 33–35.

137 *Cogan*, 114 F.4th at 1070 (9th Cir. 2024) (Smith, J., concurring).

138 MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 916 (9th Cir. 1996) (holding the malicious prosecution action is completely preempted by federal law).

139 *Cogan*, 114 F.4th at 1067.

140 Rosenberg v. DVI Receivables XVII, LLC, 835 F.3d 414, 420–21 (3d Cir. 2016); *In re* Repository Techs., Inc., 601 F.3d 710, 723–24 (7th Cir. 2010).

141 *Cogan*, 114 F.4th at 1067.

and malicious prosecution,[142] and Cogan was ultimately found liable for malicious prosecution.[143] The Restatement (Third) of Torts defines abuse of process as taking advantage of the legal process with intent to achieve an objective outside the scope of the process.[144] Abuse of process is about misusing the judicial process to achieve certain objectives.[145]

The Restatement defines malicious prosecution for civil proceedings in §§ 24–25.[146] An individual or an attorney will be held liable if they initiate a civil proceeding against another without probable cause, the purpose of the proceeding is not adjudication, and the proceeding ends in favor of the defendant.[147] Probable cause is evidenced if (1) the facts can be established and (2) there is a possibility that the claim is valid or there is "a good-faith argument for the extension, modification, or reversal of existing law."[148] An attorney has advantages in defending against a malicious prosecution action that other individuals do not: Attorneys can (1) rely on facts provided by the client so long as these facts are not false or unreasonable and (2) there must be evidence, not a mere inference, that there was an improper purpose behind bringing the claim.[149] If the plaintiff is successful in litigation, they are entitled to damages.[150] In Trabucco's abuse of process suit, the Arizona Court of Appeals affirmed summary judgment for malicious prosecution given that Cogan could not produce any witnesses, expert testimony, or evidence that would suggest Trabucco acted willfully and maliciously.[151] If a plaintiff succeeds, they

142 *Id.* at 1058–59.

143 *Id.*

144 RESTATEMENT (THIRD) OF TORTS § 26 (A.L.I. 2020) ("An actor is subject to liability for the abuse of judicially issued process to achieve an objective that is outside the purpose for which the process is intended.").

145 RESTATEMENT (THIRD) OF TORTS § 26 cmt. b (A.L.I. 2020) ("Liability arises under this Section when a party causes process to be issued in order to achieve ends that are not part of its intended purpose.").

146 RESTATEMENT (THIRD) OF TORTS § 24–25 (A.L.I. 2020).

147 RESTATEMENT (THIRD) OF TORTS § 24 (A.L.I. 2020).

148 RESTATEMENT (THIRD) OF TORTS § 25 (A.L.I. 2020).

149 RESTATEMENT (THIRD) OF TORTS § 24 cmt. f (A.L.I. 2020). Most of the time it is enough to show malicious prosecution by finding that there is a lack of probable cause for the lawsuit. *Id.* An attorney, however, can sometimes bring a suit even if they do not believe it will succeed. *Id.* Thus to find an attorney is liable of malicious prosecution, the plaintiff must show the attorney had an improper purpose for bringing the suit. *Id.*

150 RESTATEMENT (THIRD) OF TORTS § 24 cmt. i (A.L.I. 1977) (explaining that sanctions are permitted but it does not preempt or preclude litigation, but if sanctions are awarded it should be considered when calculating damages).

151 Trabucco v. Cogan, No. 1 CA-CV 18-0526, 2020 WL 3250860, at *7 (Ariz. Ct. App. Jan. 16, 2020) (footnote omitted):

> Cogan had produced no witness, much less an expert, opining that this even constituted medical negligence, let alone any objective evidence to support the allegations of willful and malicious behavior. Further, he has still not produced any evidence showing he had

are entitled to compensatory damages for any harm resulting from the proceedings, harm to their reputation, expenses reasonably incurred, pecuniary loss, and emotional distress.[152]

2. Ninth Circuit Finds Complete Preemption of State Law Torts

The doctrine of complete preemption can remove the state court claim to a federal court and apply federal law.[153] The Ninth Circuit has held that abuse of process and malicious prosecution actions are completely preempted by federal law and, furthermore, federal claims must be brought in a federal bankruptcy court.[154] The following cases provide insight into the precedent the Ninth Circuit relied on in *Cogan*.

a. MSR Exploration

In *MSR Exploration*, the debtor entered a contract with the creditor where the debtor would purchase gas from the creditor, and if there was any drop in gas prices, the two companies would split the difference.[155] However, after three years, the debtor reduced the price it paid for gas despite an objection from the creditor.[156] Later, the debtor filed for chapter 11 bankruptcy and the creditor asserted claims which the bankruptcy court disallowed.[157] After the reorganization plan was confirmed and substantially completed, the debtor filed a malicious prosecution action against the creditor in a district court.[158]

The court addressed whether state malicious prosecution claims were completely preempted by federal bankruptcy law,[159] which according to the court, required it to intertwine preemption and

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an objectively reasonable basis for claiming Dr. Trabucco willfully and maliciously killed his own patient.

152 RESTATEMENT (SECOND) OF TORTS § 681 (A.L.I. 1977).

153 Johnson, *supra* note 126, at 31–33; Margaret Tarkington, *Rejecting the Touchstone: Complete Preemption and Congressional Intent After* Beneficial National Bank v. Anderson, 59 S.C. L. REV. 225, 226–27 (2008) (explaining that complete preemption "is a jurisdictional doctrine that allows for removal based on a federal preemption defense, even though the plaintiff's complaint asserts only state law claims").

154 *See* MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 916 (9th Cir. 1996) (holding malicious prosecution actions are completely preempted by the Bankruptcy Code and must be brought in the bankruptcy court); *In re* Miles, 430 F.3d 1083, 1094 (9th Cir. 2005) (holding abuse of process actions are completely preempted by the Bankruptcy Code).

155 *MSR Expl.*, 74 F.3d at 911.

156 *Id.* at 911–12.

157 *Id.* at 912.

158 *Id.*

159 *Id.* (questioning "whether state malicious prosecution actions for events taking place within the bankruptcy court proceedings are completely preempted by federal law").

jurisdiction.[160] The court lists four reasons why complete preemption applies: First, Congress shows an expressed intent by giving district courts exclusive jurisdiction over bankruptcy matters in 28 U.S.C. § 1334(a).[161] Second, the complexity of bankruptcy law shows Congress's intent to keep it under one federal system.[162] There are numerous claims in a bankruptcy proceeding that can lead to malicious prosecution actions and that can complicate the bankruptcy process even further.[163] Third, the framers understood the need for uniformity, and expressly granted Congress the power to create bankruptcy law.[164] Finally, the Ninth Circuit has previously spoken about complete preemption in bankruptcy in *Gonzales*.[165] The Ninth Circuit held that the debtor's malicious prosecution action must be a federal claim and brought in the bankruptcy court.[166]

b. In re Miles

In *In re Miles*, the debtors filed an abuse of process claim in state court after an involuntary bankruptcy petition was dismissed.[167] The creditors removed the action to bankruptcy court and moved to dismiss, alleging complete preemption.[168] The Ninth Circuit relied on *MSR Exploration* to hold that 11 U.S.C. § 303(i) completely preempts state law.[169] The court further defended complete preemption by stating that involuntary bankruptcy proceedings were created by Congress for creditors as an "equitable treatment" and thus, state court remedies could interfere with the involuntary bankruptcy proceeding.[170] The court noted that not all state actions related to bankruptcy proceedings are preempted because state law provides much of the bases for the bankruptcy

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160 *Id.* ("Thus, preemption and jurisdiction are to that extent inexorably intertwined.").

161 *Id.* at 913–14.

162 *Id.* at 914.

163 *Id.* ("Debtors' petitions, creditors' claims, disputes over reorganization plans, disputes over discharge, and innumerable other proceedings, would all lend themselves to claims of malicious prosecution. Those possibilities might gravely affect the already complicated processes of the bankruptcy court.").

164 *Id.*

165 *Id.* at 915.

166 *Id.* at 916.

167 *In re* Miles, 430 F.3d 1083, 1086 (9th Cir. 2005).

168 *Id.* at 1087.

169 *Id.* at 1089–91. The court mentions that Congress intended that damages only arise from § 303(i) for involuntary bankruptcy petitions. *Id.* at 1089. The sanctions under § 303(i) that operate as a remedy, further shows "that Congress rejected other penalties," including those under state tort law. *Id.* at 1090.

170 *Id.* at 1090.

system.[171] But, in this circumstance, § 303(i) completely preempted state abuse of process claims.[172]

3. Circuit Split Regarding Federal Preemption

Courts are instructed to rely either on Congress's expressly stated intentions or on implied congressional intent when determining if an area of law is completely preempted.[173] Since only a few areas of law are explicitly preempted, there are inconsistent applications of the complete preemption doctrine in bankruptcy proceedings.[174] The concurrence in *Cogan* suggests a circuit split between the Ninth Circuit, Third Circuit, and Seventh Circuit regarding complete preemption in bankruptcy.[175]

In *Rosenberg v. DVI Receivables XVII*, the Third Circuit held that the Bankruptcy Code does not preempt state law when a nondebtor seeks damages from an involuntary bankruptcy petition.[176] In this case, DVI filed an involuntary bankruptcy petition against Rosenberg and the bankruptcy court dismissed the claims and awarded damages to Rosenberg.[177] Then, Rosenberg's affiliates sought to recover damages under a state law tortious interference claim, but a federal district court held that the state law of tortious interference was preempted by bankruptcy law.[178] The Third Circuit disagreed and held that § 303(i) did not preempt state law.[179] The court first held that since the plaintiffs were not debtors, they did not have a claim under § 303(i).[180] Then, the court reviewed § 303(i) and found that Congress did not have a clear intent to preempt state law for nondebtors.[181] In other words, there is no preemption because Congress was silent on state law remedies for nondebtors.[182] The court dismissed the concerns that relying on state law can disrupt bankruptcy law, and explained that state courts can and do account for federal bankruptcy law.[183] The Third Circuit addresses *In re Miles* and states that the Ninth Circuit's analysis of preemption

171 *Id.* at 1092.
172 *Id.*
173 Johnson, *supra* note 126, at 58.
174 *See supra* notes 131–140 and accompanying text.
175 Cogan v. Trabucco, 114 F.4th 1054, 1070–71 (9th Cir. 2024) (Smith, J., concurring).
176 Rosenberg v. DVI Receivables XVII, LLC, 835 F.3d 414, 419 (3d Cir. 2016).
177 *Id.* at 416.
178 *Id.*
179 *Id.*
180 *Id.* at 418.
181 *Id.* at 419.
182 *Id.* at 419–20.
183 *Id.* at 420–21.

contradicted the Third Circuit's requirement of clear congressional intent to find complete preemption.[184]

The Seventh Circuit in *In re Repository Technologies* addressed preemption when the defendants argued that the plaintiff's civil conspiracy and tortious interference state-law suit was completely preempted by federal law.[185] Repository Technologies was a company in the software industry when it experienced a downturn that caused it to file chapter 11.[186] A creditor sought to recover on a loan contract, but the bankruptcy court dismissed the case after Repository Technologies could not provide a confirmable plan.[187] The creditor filed a suit in state court against the firm that represented Repository Technologies in its chapter 11 case.[188] The creditor alleged civil conspiracy and tortious interference, and the defendants transferred the case to a district court.[189] The defendants argued the Bankruptcy Code completely preempted the creditor's suit.[190] While the district court noted that the Bankruptcy Code and the creditor's state-law claims are intertwined, the Seventh Circuit held that without an express federal remedy, the state-law claims are not completely preempted.[191] The Seventh Circuit distinguished this case from *In re Miles* by explaining that an allegation of an abusive voluntary bankruptcy petition does not have a clause in the Bankruptcy Code that provides a creditor any express remedies, and therefore, the court could not adopt the Ninth Circuit's reasoning.[192]

The Ninth Circuit, unlike the Third Circuit and Seventh Circuit, takes a broad approach to complete preemption, often arguing that the complexity and nature of bankruptcy law requires that any actions deriving from a bankruptcy proceeding must be brought in federal court.[193] Additionally, the Ninth Circuit focused on the remedies that

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184 *Id.* at 421.

185 *In re* Repository Techs., Inc., 601 F.3d 710, 722–23 (7th Cir. 2010).

186 *Id.* at 714.

187 *Id.* at 715.

188 *Id.* at 716.

189 *Id.* at 716:

> Nelson filed a complaint in the Illinois Circuit Court of Cook County . . . alleging that the defendants had (1) conspired with RTI's majority shareholders . . . to use RTI's Chapter 11 bankruptcy case to enrich themselves, (2) tortiously interfered with RTI's loan contract with Nelson, and (3) abused the bankruptcy process.

190 *Id.* at 719.

191 *Id.* at 723 ("Examining the interplay between the Bankruptcy Code and Nelson's state-law claims of civil conspiracy and tortious interference, we cannot identify any Code provision that provides an 'exclusive cause of action' for the defendants' alleged filing for bankruptcy for the unlawful purpose of enriching themselves." (quoting Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 8 (2003)).

192 *Id.* at 724.

193 *See supra* notes 161–165 and accompanying text.

Congress has provided.[194] On the other hand, the Third Circuit focused on Congress's clear intent and recognized congressional silence as an objection to complete preemption.[195] An important part of the Third Circuit's decision in *Rosenberg* was the reinforcement that state courts have the ability to consider federal bankruptcy law.[196] The Seventh Circuit challenged the Ninth Circuit's interpretation of federal remedies and held that without an express federal remedy, state law is not preempted.[197] The circuit split emphasizes Judge Smith's concern that federal remedies may not adequately redress a malicious prosecution action for a third-party, noncreditor.[198]

C. Rooker-Feldman *Doctrine*

The *Rooker-Feldman* doctrine is a combination of two key Supreme Court cases, *Rooker v. Fidelity Trust Co.* and *District of Columbia Court of Appeals v. Feldman*.[199] It was later narrowed in *Exxon Mobil*.[200] For example, if an individual lost in state court, and then tried to petition in federal court to collaterally attack the state court judgment, *Rooker-Feldman* would bar the case.[201] This is because the *Rooker-Feldman* doctrine prevents federal courts from exercising appellate jurisdictional review over state court decisions.[202] The reasoning behind *Rooker-Feldman* is it seeks to bar a wide cast of federal jurisdiction and protect federalism by respecting state courts and their ability to adjudicate federal issues.[203] Since *Rooker-Feldman* prevents a federal court from hearing a

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194 Gonzales v. Parks, 830 F.2d 1033, 1035–36 (9th Cir. 1987) (explaining that sanctions that can be imposed).

195 *See* Rosenberg v. DVI Receivables XVII, LLC, 835 F.3d 414, 419–20 (3d Cir. 2016).

196 *See supra* note 183 and accompanying text.

197 *See In re* Repository Techs., Inc., 601 F.3d 710, 724 (7th Cir. 2010) (noting that the Bankruptcy Code lacks comprehensive and express remedies to address an abuse of process claim).

198 Cogan v. Trabucco, 114 F.4th 1054, 1071 (9th Cir. 2024) (Smith, J., concurring).

199 *Id.* at 1063.

200 *Id.* at 1063–64; Bradford Higdon, *The Rooker-Feldman Doctrine: The Case for Putting It to Work, Not to Rest*, 90 U. CIN. L. REV. 352, 360 (2021) (explaining that after circuits applied *Rooker-Feldman* differently, "[t]he Court tried to clarify the doctrine's breadth and provide further direction in *Exxon Mobil*").

201 *See* Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 283–84 (2005):

> 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 the injures caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

202 Margulis, *supra* note 92, at 926.

203 Dustin E. Buehler, *Revisiting Rooker-Feldman: Extending the Doctrine to State Court Interlocutory Orders*, 36 FLA. ST. U. L. REV. 373, 393 (2009) ("There are three fundamental principles behind Rooker-Feldman. First, the doctrine enforces constitutional separation of powers

case, preclusion and *Rooker-Feldman* often get muddled together; however, the *Rooker-Feldman* doctrine is not the same as preclusion and abstention—it instead has a unique function.[204] Preclusion is an affirmative defense that a defendant can raise when a plaintiff complains in a subsequent proceeding that a state court did not provide redress.[205] The *Rooker-Feldman* doctrine, on the other hand, is broader than preclusion because it bars a federal court from hearing the case at all.[206] *Rooker-Feldman* also plays an important role when states do not give protection to judgments that are on appeal or interlocutory orders.[207]

The application of the *Rooker-Feldman* doctrine in bankruptcy law is difficult to discern. The issue with applying *Rooker-Feldman* to bankruptcy proceedings is that some matters fall within federal bankruptcy courts' exclusive jurisdiction, and thus, state courts cannot adjudicate these issues.[208] One example is the discharge injunction.[209] State court judgments on discharge injunctions are rendered void,[210] and thus *Rooker-Feldman* does not apply to issues surrounding discharge injunctions.[211] However, if a state court holds that it does have jurisdiction over a particular issue and renders a judgment, as seen in *In re McGhan*, then the federal court must exercise appellate review to declare the state court judgment void for lack of jurisdiction.[212] This

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and the limited jurisdiction of federal courts. Second, Rooker-Feldman advances interests of federalism by protecting state court judgments. Third, the doctrine recognizes that state courts are fully competent to adjudicate federal claims.") [hereinafter Buehler, *Revisiting Rooker-Feldman*].

204 Dustin E. Buehler, *Jurisdiction, Abstention, and Finality: Articulating a Unique Role for the Rooker-Feldman Doctrine*, 42 SETON HALL L. REV. 553, 557 (2012) [hereinafter Buehler, *Jurisdiction, Abstention, and Finality*]; *see Exxon Mobil*, 544 U.S. at 284.

205 *See* Henrichs v. Valley View Dev., 474 F.3d 609, 614 (9th Cir. 2007) (quoting Noel v. Hall, 341 F.3d 1148, 1165 (9th Cir. 2003) (explaining that "preclusion, not *Rooker-Feldman*, applies when 'a federal plaintiff complains'" that a state court did not provide redress, but that issue is now precluded).

206 *See id.* at 613 (explaining that *Rooker-Feldman* applies where a plaintiff is complaining that the state court judgment itself caused the harm); *Rooker Feldman the New Abstention Doctrine for Practitioners in the Ninth Circuit*, AM. BANKR. INST. (April 1998), https://www.abi.org/abi-journal/rooker-feldman-the-new-abstention-doctrine-for-practitioners-in-the-ninth-circuit [https://perma.cc/4VED-SLAR].

207 Buehler, *Jurisdiction, Abstention, and Finality*, supra note 204, at 590–91 (explaining that the *Rooker-Feldman* doctrine is the only doctrine that prevents the state court judgment from being collaterally attacked while an appeal is pending or there is an interlocutory order).

208 *See supra* Section II.A.

209 *See supra* Section II.A.2.

210 *See supra* Section II.A.2.

211 Christopher V. Hawkins, *The Rooker-Feldman Doctrine and Preclusion in a Nondischargeability Proceeding—Be Careful Where You Draw the Lines*, 28 CAL. BANKR. J. 17, 25 (2005).

212 Margulis, *supra* note 92, at 928 ("That is, in order to find that the state intruded upon the federal courts' exclusive jurisdiction, the federal court must first—impermissibly—exercise appellate jurisdiction over the state court's decision."). This raises circular reasoning because to hold that a state court does not have jurisdiction, the federal court must act as an appellate court to

situation is exactly what *Rooker-Feldman* seeks to prevent.[213] State courts are put in a difficult position to adjudicate post-discharge bankruptcy issues because the state court judgment may be collaterally attacked by a bankruptcy court that holds it has exclusive jurisdiction over the particular issue.[214]

III. ANALYSIS

The Ninth Circuit incorrectly made "related to" jurisdiction exclusive in *Cogan*. In doing so, it divested state courts of subject matter jurisdiction over its own torts and erroneously held that federal law completely preempts state abuse of process laws.[215] By concluding that "related to" jurisdiction is exclusive, it nullified the application of *Rooker-Feldman*.[216] However, this Note's analysis will show that "related to" jurisdiction is not exclusive and that the Ninth Circuit strayed away from its own modern preemption test. In illustrating this, it will become clear that the *Rooker-Feldman* doctrine does apply in *Cogan*.

A. *Bankruptcy Jurisdiction Has Ceased After Issuing Discharge Injunction*

While bankruptcy courts do have exclusive jurisdiction over injunctions,[217] that does not extend to all matters "related to" the bankruptcy proceedings.[218] The Ninth Circuit relied on *Gonzales* to hold that Trabucco's suit was within the federal court's exclusive jurisdiction.[219] In *Gonzales*, the creditor filed an abuse of process action

declare that the state court does not have jurisdiction. *Id.* The Ninth Circuit held in *In re McGhan* that the *Rooker-Feldman* doctrine does not apply because the state court does not have jurisdiction to adjudicate the issue of adequate notice in the first place. *See In re* McGhan, 288 F.3d 1172, 1178–80 (9th Cir. 2002); *supra* Section II.A.2.

213 *See* notes 202–203 and accompanying text.

214 Margulis, *supra* note 92, at 934 ("[G]ranting federal courts the power to collaterally attack state decisions imposes an unreasonably high burden on any state court that renders post-discharge bankruptcy judgments.").

215 *See generally* Cogan v. Trabucco, 114 F.4th 1054 (9th Cir. 2024) (holding that federal law completely preempts state malicious prosecution action and falls within the federal courts' exclusive jurisdiction).

216 *Id.* at 1067.

217 *See In re* Gruntz, 202 F.3d 1074, 1081–82 (9th Cir. 2000); *supra* Section II.A.2.

218 Often, "related to" jurisdiction may be necessary to fully adjudicate the bankruptcy proceeding. *See supra* note 82 and accompanying text. However, in *Cogan*, it was not necessary to hold that the court had exclusive jurisdiction over a suit brought by a debtor against a third-party. *See Cogan*, 114 F.4th at 1068–69 (Smith, J., concurring).

219 *Cogan*, 114 F.4th at 1065–66.

in state court arguing that the debtor improperly filed chapter 11.[220] The Ninth Circuit held the state court judgment void for violating the automatic stay injunction and explained that the creditor's suit fell within the bankruptcy court's exclusive jurisdiction.[221] The court explained that the nature of the automatic stay means that state courts do not have the authority to determine if a bankruptcy petition was an abuse of process.[222] The Ninth Circuit further explained that remedies, like sanctions, support the finding that there is exclusive jurisdiction over bankruptcy petitions.[223] Unlike in *Cogan*, there are adequate remedies to address frivolous bankruptcy filings, such as 11 U.S.C. § 109(g), which provides a penalty for a dismissal of bad faith, and 11 U.S.C. §§ 362(c)(3), 362(c)(4), which limits the application of the automatic stay injunction.[224] This distinguishes *Gonzales* from *Cogan* because Trabucco was a debtor—not a creditor—filing in state court.[225]

Trabucco's state court action did not involve a prepetition debt, and it had nothing to do with Trabucco's reasoning for filing chapter 7 bankruptcy.[226] Once Trabucco's prepetition debts were discharged, he continued his state abuse of process claim against Cogan, a third-party, noncreditor to the original chapter 7 bankruptcy proceeding.[227] This subsequently turned Trabucco into a creditor seeking to collect from Cogan, a nonbankrupt debtor, to whom the discharge injunction did not apply.[228] The discharge injunction only prevents suits initiated against the

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220 *See* Gonzales v. Parks, 830 F.2d 1033, 1033–34 (9th Cir. 1987).

221 *Id.* at 1036–37; *see supra* Section II.A.3.

222 *See Gonzales*, 830 F.2d 1033 at 1035.

223 *See id.* at 1036.

224 *See* 11 U.S.C. § 109(g):

> Notwithstanding any other provision of this section, no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court . . . .

11 U.S.C. §§ 362(c)(3) (explaining that a debtor who had a pending chapter 7, 11, or 13 case within the past year may lose the automatic stay protection after thirty days of another bankruptcy case commencing unless the debtor can overcome the presumption of bad faith filing), 362(c)(4)(A) (noting that a debtor can lose the protection of the automatic stay protection on the latter case if two or more cases are commenced within a year).

225 *Gonzales*, 830 F.2d at 1033–34 (noting that the creditor went to state court); Cogan v. Trabucco, 114 F.4th 1054, 1058 (9th Cir. 2024) (noting that it was the debtor, Trabucco, going to state court).

226 *See Cogan*, 114 F.4th at 1057–58.

227 *Id.* at 1058; 11 U.S.C. § 350(a) ("After an estate is fully administered and the court has discharged the trustee, the court shall close the case.").

228 *See* 11 U.S.C. § 524(a) (explaining that the discharge injunction applies to protect the debtor from suits being commenced against them, but it does not harm the debtor by preventing them from commencing a suit); 11 U.S.C. § 524(e) ("[D]ischarge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.").

debtor, not suits initiated by the debtor.[229] Therefore, the Ninth Circuit should not claim exclusive jurisdiction over Trabucco's abuse of process suit because it does not fall under the umbrella of § 524. Furthermore, states should have the right to determine their own jurisdiction over their own torts.[230] Consequently, the Ninth Circuit reasoning followed from exclusive jurisdiction over whether an action violates automatic injunctions to exclusive jurisdiction over a debtor's rights against third-parties under state tort law. The injunction that protects debtors has become a weapon to curtail debtors rights.

B. *Ninth Circuit Improperly Applies the Complete Preemption Doctrine in* Cogan

The Ninth Circuit held malicious prosecution actions are completely preempted by federal bankruptcy law.[231] The court, extending *MSR Exploration*, explained that malicious prosecution actions are so fundamentally related to the bankruptcy proceeding that they can only be brought in a federal bankruptcy court.[232] In *Cogan*, however, the Ninth Circuit strayed away from its modern preemption test in *Saldana*, which requires a federal cause of action before finding complete preemption.[233] In doing so, the Ninth Circuit conflicted with the Third Circuit and Seventh Circuit on the issue of complete preemption.

1. The Ninth Circuit Fails to Follow Its Modern Preemption Test in *Saldana*

The first prong of the *Saldana* test asks whether Congress intended to preempt state law.[234] Congressional intent is discerned by looking at the statute itself, the jurisdictional language, and legislative history.[235]

229 *See* 11 U.S.C. § 524.

230 *Developments in the Law Res Judicata*, 65 HARV. L. REV. 818, 852–55 (1952).

231 *Cogan*, 114 F.4th at 1066–67. *See generally* MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910 (9th Cir. 1996) (holding malicious prosecution actions are completely preempted and should be brought in bankruptcy court).

232 *See Cogan*, 114 F.4th at 1066 (citing *MSR Expl.*, 74 F.3d at 912, 915–16) (emphasizing that this federal claim is so federal in nature that it can only be filed in bankruptcy court).

233 *Cogan*, 114 F.4th at 1071 (Smith, J., concurring).

234 *Id.* (Smith, J., concurring) (quoting Saldana v. Glenhaven Healthcare LLC, 27 F.4th 679, 687–88 (9th Cir. 2022) *cert. denied*, 143 S. Ct. 444 (2022)).

235 *See* Johnson, *supra* note 126, at 59:

> Courts attempting to systematize complete preemption analysis . . . identified several questions relevant to the analysis: (1) whether the state claim is displaced by federal law under an ordinary preemption analysis; (2) whether the federal statute provides a cause of action; (3) what kind of jurisdictional language exists in the federal statute; and

Looking at the Bankruptcy Reform Act of 1978 as a whole, it was created to address the differences in state laws, the various levels of protection given to debtors, and the sharp rise in bankruptcy filings.[236] The Ninth Circuit relied on this reasoning in *Cogan*, and emphasized the complex nature of bankruptcy requires courts to protect debtors and creditors from any disruptions to the proceeding, including malicious prosecution actions against third-parties.[237] Admittedly, while the complexity of bankruptcy may point towards Congress's intent to preempt state law, that is not enough to show Congress intended to completely preempt state law claims,[238] especially because there are three areas of law that the Supreme Court has expressly said Congress intended to preempt.[239] Thus, with the circuits split on whether Congress intended state law torts to be preempted,[240] under the first prong of *Saldana*, the majority provided little evidence to show that Congress intended to preempt state tort laws.

The second prong of the *Saldana* test asks whether federal law provides an alternative cause of action.[241] The Ninth Circuit in *Cogan* did not discuss an adequate federal cause of action for Arizona's state tort of malicious prosecution that would signal congressional intent to preempt

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> (4) what kind of language is present in the legislative history to represent Congress's intentions.

See also Rosenberg v. DVI Receivables XVII, LLC, 835 F.3d 414, 419 (3d Cir. 2016) (stating "[t]o discern the preemptive intent of Congress, we look to the text, structure, and purpose of the statute and the surrounding statutory framework") (citing Medtronic, Inc. v. Lohr, 518 U.S. 470, 486 (1996)).

236 *See* 90 CONG. REC. 1832 (1968) (statement of Representative Seymour Halpern):

> Mr. Chairman, during the lengthy hearings on this bill, incontrovertible evidence mounted to demonstrate that the practice of wage garnishment is directly responsible for some highly undesirable, and growing economic and social ills, including the alarming increase in levels of personal bankruptcies. Because State [wage] garnishment laws vary so greatly in the protection they offer to the debtor, and because, as I shall explain, the consequences of [wage] garnishment can be so drastic, I feel that a Federal law in this area is vitally needed.

DAVID A. SKEEL, JR., DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA 136 (2001).

237 *Cogan*, 114 F.4th at 1066 ("We stated that 'the highly complex laws needed to constitute the bankruptcy courts and regulate the rights of debtors and creditors' further 'underscore[d] the need to jealously guard the bankruptcy process from even slight incursions and disruptions brought about by state malicious prosecution actions." (quoting *MSR Expl.*, 74 F.3d at 914)).

238 *See* Johnson, *supra* note 126, at 57 (explaining that there must be a presumption against preemption).

239 *See* note 131 and accompanying text (noting that Congress has only explicitly preempted three areas of state law).

240 *See supra* Section II.B.3.

241 *Cogan*, 114 F.4th at 1071 (Smith, J., concurring) (quoting Saldana v. Glenhaven Healthcare LLC, 27 F.4th 679, 687–88 (9th Cir. 2022) *cert. denied*, 143 S. Ct. 444 (2022)); *see also* Johnson, *supra* note 126, at 59 (explaining that courts will look to see if there is an adequate cause of action under federal law to justify preempting state law).

state law.[242] Instead, the majority determined that because Trabucco's claim arose from the bankruptcy proceeding, it was so federal in nature that it must be brought in a bankruptcy court.[243] The majority explained that state court proceedings can interfere with the federal bankruptcy proceedings brought by creditors and third-parties, so they must be completely preempted.[244] However, the court did not identify any specific federal causes of action that would adequately address Trabucco's claim.[245]

The concurrence, on the other hand, discussed potential federal causes of actions and raised doubts that 11 U.S.C. § 105 and Rule 9011 of the Federal Rules of Bankruptcy Procedure justified preempting state law.[246] Under § 105 the court has the power to issue court orders to adjudicate the Bankruptcy Code,[247] and under Rule 9011, the court may issue sanctions if there is a frivolous motion filed.[248] However, Rule 9011 is not intended to make the plaintiff whole, it just issues sanctions against attorneys.[249] These two statutes fall short of complete preemption.

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242 The court only briefly mentioned remedies by stating that Trabucco did not invoke any remedies provided in *MSR Exploration*. *See Cogan*, 114 F.4th at 1066 ("We noted in *MSR* that Congress had provided a panoply of remedies to address misconduct occurring during bankruptcy proceedings . . . but Trabucco did not invoke any of those." (citing *MSR Expl.*, 74 F.3d at 915)). In *MSR Exploration*, the Ninth Circuit listed out the following:

> [Rule] 9011 (frivolous and harassing filings); 11 U.S.C. § 105(a) (authority to prevent abuse of process); 11 U.S.C. § 303(i)(2) (bad faith filing of involuntary petitions); 11 U.S.C. § 362[(k)] (willful violations of stays); 11 U.S.C. § 707(b) (dismissal for substantial abuse); 11 U.S.C. § 930 (dismissal under Chapter 9); 11 U.S.C. § 1112 (dismissal under Chapter 11).

MSR Expl., 74 F.3d at 915. The court, however, did not discuss a specific federal remedy in depth as an option for MSR. *See id.* The concurrence in *Cogan* discusses Rule 9011 and 11 U.S.C. § 105(a) as remedies that fall short and this Note analyzes this as well. *Cogan*, 114 F.4th at 1071 (Smith, J., concurring); *see infra* notes 246–250 and accompanying text.

243 *Cogan*, 114 F.4th at 1066–67.

244 *Id.* (quoting *MSR Expl.*, 74 F.3d at 916):

> Trabucco's malicious prosecution claim against both the Scharfs and their lawyer thus directly implicates *MSR*'s concern that "[t]he threat of later state litigation may well interfere with the filings of claims *by creditors* and with other necessary actions that they, *and others*, must or might take within the confines of the bankruptcy process."

245 The Ninth Circuit only points to remedies that it discussed in *MSR Exploration*. *Id.* at 1066.

246 *Id.* at 1068–69, 1071 (Smith, J., concurring).

247 11 U.S.C. § 105(a):

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

248 FED. R. BANKR. P. 9011(c).

249 *See* FED. R. BANKR. P. 9011(c)(1) ("If, after notice and a reasonable opportunity to respond, the court determines that (b) has been violated, the court may, subject to the conditions in this

Conversely, state tort law specifically addresses abuse of process, including malicious prosecution.[250] It explains each element of the tort and how an individual can defend against accusations.[251] Trabucco filed suit in Arizona state court seeking damages from Cogan;[252] but by holding the state tort claim was completely preempted, the court deprived Trabucco of damages that were intended to make him whole again.[253] The Ninth Circuit essentially replaced Arizona state tort law with no functional equivalent, and thus, it fails under the second prong of *Saldana*.

2. The Ninth Circuit Improperly Extended Its Precedent

Cogan illustrates an improper extension of precedent. Moreover, the Ninth Circuit differed from the Third Circuit and Seventh Circuit when it held that malicious prosecution actions were completely preempted by federal bankruptcy law.[254]

The Ninth Circuit improperly extended *MSR Exploration* to suits initiated by a debtor against a third-party, noncreditor. The Ninth Circuit heavily relied on *MSR Exploration* when it held Trabucco's suit was completely preempted by federal law and could only be brought in federal bankruptcy court.[255] This Note recognizes that the Ninth Circuit correctly relied on *MSR Exploration* as precedent, but suggests that *MSR Exploration* may no longer be in line with the modern complete preemption test.[256] There is no adequate federal cause of action for

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subdivision (c), impose an appropriate sanction on any attorney, law firm, or party that committed the violation or is responsible for it.").

250 *See supra* Section II.B.1.

251 *See supra* Section II.B.1.

252 Cogan v. Trabucco, 114 F.4th 1054, 1057–58 (9th Cir. 2024).

253 *See id.* at 1058, 1067 (noting Trabucco was awarded $8,000,000 in damages but the Ninth Circuit held those claims were completely preempted). Sanctions are different than damages, because sanctions are a penalty that is paid to the court, but damages are given to the injured party. *See* FED. R. BANKR. P. 9011(4)(A); *see also Damages*, BLACK'S LAW DICTIONARY (12th ed. 2024) (explaining that damages are given to compensate for an injury).

254 *See supra* Section II.B.3. By applying *MSR Exploration*, the Ninth Circuit abandoned its modern complete preemption test under *Saldana* and created a circuit split. *See Cogan*, 114 F.4th at 1070–71 (Smith, J., concurring).

255 *Cogan*, 114 F.4th at 1066–67 (relying on *MSR Exploration* throughout the opinion). This Note recognizes the Ninth Circuit correctly relied on its precedent.

256 *Id.* at 1071 (Smith, J., concurring):

> I am skeptical that 11 U.S.C. § 105 and Rule 9011 of the Federal Rules of Bankruptcy Procedure would satisfy the modern test for completely preempting state-law malicious prosecution claims for events taking place within bankruptcy proceedings (especially when those claims are brought against third-party attorneys, like Cogan, who never had any personal claims to assert against the estate.

malicious prosecution.[257] *MSR Exploration* and its four factors do not align with the Supreme Court's decision in *Beneficial National Bank* as there is no adequate federal law that displaces state tort law.[258] Without an adequate federal cause of action, the Ninth Circuit improperly extended *MSR Exploration* to a third-party suit.[259] In *Cogan*, the malicious prosecution action was initiated against Cogan in state court towards the end of Trabucco's chapter 7 proceeding, but no ruling on Cogan's malice had been made in the bankruptcy proceeding.[260] The suit filed against Cogan did not interfere with the chapter 7 proceeding in a way that would suggest finding complete preemption.[261] Without an adequate federal cause of action, the Ninth Circuit improperly extended *MSR Exploration* to a third-party suit[262] and *MSR Exploration* is not in line with *Beneficial National Bank*.

The Ninth Circuit found the Bankruptcy Code completely preempted state abuse of process torts again after *MSR Exploration*. In *In re Miles*, the Ninth Circuit held that abuse of process claims involving involuntary bankruptcy petitions were completely preempted by federal law.[263] The court focused on congressional intent, explaining that by providing remedies, Congress implicitly rejected other remedies.[264] The remedies for involuntary bankruptcy petitions appear to mirror state law regarding damages and punitive damages.[265] However, the Third Circuit

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257 *Malicious Prosecution*, CORNELL L. SCH.: LEGAL INFO. INST. (Apr. 2025), https://www.law.cornell.edu/wex/malicious_prosecution [https://perma.cc/2PVJ-TF2J]; Saldana v. Glenhaven Healthcare LLC, 27 F.4th 679, 687–88 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 444 (2022) (explaining that the modern preemption test requires a substitute cause of action).

258 *See supra* notes 129–133, 161–165 and accompanying text.

259 *See* Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 8 (2003) (explaining that for a federal court to find that a state cause of action is completely preempted, there must be a federal law that "provide[s] the exclusive cause of action for the claim asserted and also set[s] forth procedures and remedies governing that cause of action"); *Cogan*, 114 F.4th at 1071 (Smith, J. concurring) (noting that Cogan is a third-party).

260 *Cogan*, 114 F.4th at 1058 (noting that the proceeding began about half a year before Trabucco's debts were discharged).

261 *Id.* (noting that in 2014 Trabucco obtained a discharge, and in 2017 Trabucco obtained a jury verdict in his state malicious prosecution action); *see also* Rosenberg v. DVI Receivables XVII, LLC, 835 F.3d 414, 420–21 (3d Cir. 2016) (trusting that state courts will be mindful of federal bankruptcy law when issuing decisions).

262 *See Beneficial Nat'l Bank*, 539 U.S. at 8 (explaining that for a federal court to find that a state cause of action is completely preempted, there must be a federal law that "provide[s] the exclusive cause of action for the claim asserted and also set[s] forth procedures and remedies governing that cause of action").

263 *In re* Miles, 430 F.3d 1083, 1089, 1091–92 (9th Cir. 2005).

264 *Id.* at 1090 ("Congress's authorization of certain sanctions under § 303(i) for involuntary bankruptcy petitions filed in bad faith suggests that Congress rejected other penalties, including the kind of substantial damage awards that might be available in state court tort actions.").

265 11 U.S.C. § 303(i) (noting that the court can grant a judgment against petitioner for filing in bad faith and grant damages including punitive damages); *see supra* Section II.B.1 (describing damages permitted for malicious prosecution).

expressly disagreed with the Ninth Circuit and noted that state courts can also hear "state law claims by non-debtors for damages based on the filing of an involuntary bankruptcy petition."[266] The Third Circuit explained that, unlike the Ninth Circuit, congressional silence ends the preemption analysis.[267] Similarly, the Seventh Circuit declined to extend *In re Miles*, explaining that the Bankruptcy Code does not provide remedies to address allegedly harmful voluntary filings of bankruptcy petitions.[268]

Unlike *In re Miles* where there were federal remedies available,[269] Trabucco's malicious prosecution action is left without federal remedies. Applying state law does not interfere with Trabucco's estate nor the bankruptcy court's ability to adjudicate, especially because the court discharged Trabucco's debt years before the state court rendered a decision.[270] By holding that Trabucco's malicious prosecution action is completely preempted, state tort law no longer applies and Trabucco is left without a remedy.[271] Furthermore, Cogan was a third-party to the proceeding, and Congress did not intend that anything "related to" bankruptcy be completely preempted.[272] Accordingly, the Ninth Circuit improperly extended its precedent.

C. *The* Rooker-Feldman *Doctrine Applies in* Cogan

The Ninth Circuit erroneously held that *Rooker-Feldman* did not apply in *Cogan*, only to hold then that Trabucco's malicious prosecution action is completely preempted by federal law.[273] The court explained that when a federal court is deemed to have exclusive jurisdiction, it can collaterally attack a state court judgment.[274] This, however, implicates circular reasoning because to hold that a state court does not have jurisdiction, the court must first exercise appellate review over a state

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266 *Rosenberg*, 835 F.3d at 422.

267 *Id.* ("If we apply faithfully the presumption against preemption, silence on the part of Congress should be the end of the analysis.").

268 *In re* Repository Techs., Inc., 601 F.3d 710, 724 (7th Cir. 2010) ("The Code does not provide such comprehensive, express remedies for a creditor like Nelson allegedly harmed by a debtor's abusive, voluntary bankruptcy petition").

269 *See supra* note 264 and accompanying text.

270 Cogan v. Trabucco, 114 F.4th 1054, 1058 (9th Cir. 2024) (noting that the court discharged Trabucco in July 2014 and in January 2018, the court granted partial summary judgment, and a damages trial began); *id.* at 1071 (Smith, J., concurring) (explaining that Cogan "never had any personal claims to assert against the estate").

271 *See id.* at 1066.

272 *See id.* at 1071 (Smith, J., concurring); *supra* Section III.B.1.

273 *Cogan*, 114 F.4th at 1065–68.

274 *Id.* at 1065; *see supra* note 52 and accompanying text.

court.[275] This appellate review is precisely what *Rooker-Feldman* seeks to prevent.[276]

As discussed, the Ninth Circuit held that state torts like malicious prosecution and abuse of process were preempted by federal law.[277] When the Ninth Circuit extended its holding in *MSR Exploration*, it dispossessed state courts of jurisdiction and created a federal appellate review process that violated notions of federalism.[278] Debtors, like Trabucco, should have access to an abuse of process claim that makes them whole again. Trabucco met the three requirements under *Exxon Mobil*: (1) Cogan was a state-court loser, (2) who argued that Arizona state court improperly exercised jurisdiction, (3) and sought relief by petitioning the federal court to collaterally attack the state court judgment.[279] Yet, the Ninth Circuit permitted Cogan to collaterally attack the judgment. *Rooker-Feldman* protects a plaintiff from a federal bankruptcy court expropriating the case.[280] Without Congress explicitly granting federal courts the ability to review a state court judgment, the Ninth Circuit has encroached on states' jurisdiction.[281] Therefore, it was

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275 Margulis, *supra* note 92, at 934 ("[T]he approach elevates the federal courts to the status of final arbiters, calling upon them to act as overbearing patriarchs, incessantly peering over the shoulders of the state courts."). Judge Smith also recognized this tension in his concurrence when he stated that the Ninth Circuit's rule that *Rooker-Feldman* does not apply when the state-court judgment "'falls within the federal courts' exclusive jurisdiction' . . . regardless of whether Congress explicitly granted the lower federal courts review power," is not aligned with "the Supreme Court's statutory rationale for the *Rooker-Feldman* doctrine." *Cogan*, 114 F.4th at 1069 (Smith, J., concurring) (quoting Gonzales v. Parks, 830 F.2d 1033, 1036 (9th Cir. 1987)); MSR Expl., Ltd. v. Meridian Oil, Inc., 74 F.3d 910 (9th Cir. 1996).

276 Margulis, *supra* note 92, at 937–38.

277 *See supra* Sections III.A–B.

278 *See Cogan*, 114 F.4th at 1066; Buehler, *Revisiting Rooker-Feldman*, *supra* note 203, at 393.

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

> 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 the injures caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Cogan, 114 F.4th at 1059 ("Less than one month before the scheduled retrial of the malicious prosecution action in Arizona state court, Cogan filed this suit in Nevada federal court seeking to collaterally challenge that action."). For purposes of the *Rooker-Feldman* discussion, both the majority and the concurrence agreed there was a sufficient final state-court judgment. *Id.* at 1065, 1070 n.3.

280 Buehler, *Jurisdiction, Abstention, and Finality*, *supra* note 204, at 588–91 (explaining potential scenarios where *Rooker-Feldman* bars a federal court claim).

281 *Cogan*, 114 F.4th at 1069 (Smith, J., concurring) ("Reading this discussion, I am left with the strong impression that the question of whether *Rooker-Feldman* prevents a lower federal court from directly reviewing an injurious state-court judgment should turn on whether Congress, by statute, expressly authorized a lower federal court to engage in such review."). Furthermore, Judge Smith writes that none of the reasons Cogan cites "expressly contemplates the possibility of the federal district courts reviewing state-court judgments issued against third-party attorneys who have no personal stake in the bankruptcy estate." *Id.* at 1070 n.4.

erroneous to conclude that the *Rooker-Feldman* doctrine did not apply, especially considering that *MSR Exploration* fails the modern preemption test.[282]

Conclusion

The Ninth Circuit in *Cogan v. Trabucco* mistakenly held that *Rooker-Feldman* does not apply to Arizona state court judgment.[283] The court improperly extended "related to" jurisdiction to essentially anything that touched and concerned Trabucco's original bankruptcy proceeding.[284] To hold that only the federal bankruptcy courts have jurisdiction, the Ninth Circuit prevented Arizona from adjudicating its own torts.[285] Furthermore, the Ninth Circuit failed to abide by its modern preemption test when it held that state law abuse of process is completely preempted.[286] This deprived Trabucco of indemnification for his losses that occurred during the bankruptcy proceeding. Recognizing that congressional intent is required to apply the complete preemption doctrine, the Third Circuit and Seventh Circuit take a narrower approach.[287] Without an adequate federal remedy, the Ninth Circuit should not hold that Trabucco's malicious prosecution action is completely preempted.[288] Finally, the *Rooker-Feldman* doctrine is applicable in *Cogan* because bankruptcy courts do not have exclusive jurisdiction over state torts; and since Cogan exhausted all available state appellate remedies before petitioning the federal courts, *Rooker-Feldman* bars federal appellate review.[289] *Cogan* illustrates the consequences of extending exclusive jurisdiction, completely preempting state law, and dismissing the application of *Rooker-Feldman*. The Ninth Circuit is effectively inviting the birth of a federal abuse of process doctrine.

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282 *See supra* Section III.B.

283 *Cogan*, 114 F.4th at 1065 ("Cogan contends that Trabucco's malicious prosecution action is within the exclusive jurisdiction of the federal courts; that any judgment in that case is therefore subject to collateral attack in federal court; and that *Rooker-Feldman* thus does not bar this suit.").

284 *See supra* Section II.A.

285 *See supra* Section II.A.

286 *See supra* Section III.B. The modern preemption test changes the application of *MSR Exploration* and thus, should have resulted in Arizona state tort law being applicable.

287 The Third Circuit correctly focused on Congress's intent and whether they sought to preclude state tort claims from being litigated in state court. *See* Rosenberg v. DVI Receivables XVII, LLC, 835 F.3d 414, 421 (3d Cir. 2016). The Seventh Circuit also correctly relied on the view that the Bankruptcy Code does not provide enough remedies to the injured party. *See In re* Repository Techs., Inc., 601 F.3d 710, 724 (7th Cir. 2010).

288 *See supra* Section III.B.

289 *See* Cogan v. Trabucco, 114 F.4th 1054, 1058–59 (9th Cir. 2024); Buehler, *Jurisdiction, Abstention, and Finality*, *supra* note 204, at 588.