

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**October 7, 2021**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

EMMA SERNA,

Plaintiff - Appellant,

v.

BBVA BANK,

Defendant - Appellee.

No. 21-2080  
(D.C. No. 1:21-CV-00450-KG-JHR)  
(D. N.M.)

**ORDER AND JUDGMENT\***

Before **MATHESON, BRISCOE, and PHILLIPS**, Circuit Judges.\*\*

Emma Serna, proceeding pro se, appeals the district court’s dismissal of her complaint. Liberally construing her filings, but without serving as her advocate, *see James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013), we affirm.<sup>1</sup>

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

\*\* After examining Serna’s brief and the appellate record, this panel has determined unanimously that oral argument would not materially help determine this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

<sup>1</sup> In Serna’s letter to the Clerk of Court, she expressed her intent to appeal an unspecified order from another federal district case involving different defendants, but the same underlying controversy. *See* Case. No. 1:20-cv-00689-JB-KRS. But Serna hasn’t filed a timely notice of appeal in that other case.

## BACKGROUND

This case arises from a construction-contract dispute in New Mexico state court between Serna and Margette and David Webster. Serna lost that dispute and has spent the past fourteen years disputing the judgment entered against her. Every court to hear her arguments has ruled against her. In 2015, a New Mexico state district court entered a judgment adopting an arbitration award for the Websters. Serna alleges that BBVA Bank received a writ of garnishment arising from that judgment.

In January 2021, Serna sued BBVA Bank in the federal district of New Mexico. Her complaint alleged that the judgment and the writ were void and that BBVA Bank was improperly withdrawing funds from her accounts. She asked the district court to dissolve the writ. The district court instead dismissed her complaint without prejudice for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine. Serna did not appeal that decision.

More recently, in May 2021, Serna filed the complaint underlying this appeal. In that complaint, she re-alleges the same facts and requests the same relief that she did in the January 2021 case. The district court again dismissed her case without prejudice for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine.<sup>2</sup> This timely appeal followed.

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<sup>2</sup> In the same order, after reviewing Serna's extensive litigation history, the district court described its proposed filing restrictions, and ordered Serna to show cause as to why they should not be imposed. After failing to show cause, the district court imposed the filing restrictions. *Serna v. BBVA Bank*, No. 1:21-CV-00450-KG-JHR, 2021 WL 3077467, at \*2–3 (D.N.M. July 21, 2021). Serna failed to file a notice of appeal of

## DISCUSSION

We review a *Rooker-Feldman* dismissal de novo. See *Mann v. Boatwright*, 477 F.3d 1140, 1145 (10th Cir. 2007). The *Rooker-Feldman* doctrine bars any “federal action that tries to *modify or set aside* a state-court judgment because the state proceedings should not have led to that judgment.” *Mayotte v. U.S. Bank Nat’l Ass’n*, 880 F.3d 1169, 1174 (10th Cir. 2018). Serna argues that the New Mexico state district court’s arbitration award and “the judgment need to be vacated along with all [w]rongful orders that were issued or dispensed,” including the “wrongful attachment and garnishment.” Opening Br. at 12. But doing so would require us to “set aside” a state-court judgment because the harms for which she seeks relief all result from New Mexico state-court judgments. Her claims are therefore barred by the *Rooker-Feldman* doctrine.

Relying on *Riehm v. Engelking*, 538 F.3d 952 (8th Cir. 2008), Serna argues that the *Rooker-Feldman* doctrine doesn’t apply to her case. This is so, Serna argues, because she “asserts [as a legal wrong] an allegedly illegal act or omission by an adverse party.” Opening Br. at 4 (quoting *Riehm*, 538 F.3d at 965). But Serna has failed to quote the preceding sentence in *Riehm*: “If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court.”

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that order. And although her opening brief was timely under Federal Rule of Appellate Procedure 4, it doesn’t include argument sufficient to give notice of her intent to appeal the filing restrictions order as required by Federal Rule of Appellate Procedure 3. Thus, we are without jurisdiction to hear any challenge to the filing restrictions imposed by the district court.

*Riehm*, 538 F.3d at 965 (quoting *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)). As discussed, Serna seeks relief from state-court judgments that she alleges were erroneous. Serna's reliance on *Riehm* is therefore inapposite.

### CONCLUSION

For these reasons, exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Entered for the Court

Gregory A. Phillips  
Circuit Judge