

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 4 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICHARD LEE GREEN,

Plaintiff-Appellant,

v.

DINH HOANG PHUONG,

Defendant-Appellee.

No. 21-35146

D.C. No. 3:20-mc-00011-TMB
District of Alaska,
Anchorage

ORDER

Before: SILVERMAN, CLIFTON, and HURWITZ, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See Fed. R. App. P. 35.*

Green's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 56) are denied.

Green's motion to stay the mandate (Docket Entry No. 55) is denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

FILED

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JAN 26 2022

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D.C. No. 3:20-mc-00011-TMB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Timothy M. Burgess, District Judge, Presiding

Submitted January 19, 2022**

Before: SILVERMAN, CLIFTON, and HURWITZ, Circuit Judges.

Richard Lee Green appeals pro se from the district court's judgment dismissing his action seeking to enforce an arbitration award under 9 U.S.C. § 201. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's abstention determination under *Younger v. Harris*, 401 U.S. 37 (1971). *ReadyLink*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Healthcare, Inc. v. State Comp. Ins. Fund, 754 F.3d 754, 758 (9th Cir. 2014). We affirm.

The district court properly dismissed Green's action as barred under the *Younger* abstention doctrine because federal courts are required to abstain from interfering with pending state court proceedings where "the federal action would have the practical effect of enjoining the state proceedings." *ReadyLink*, 754 F.3d at 759 (setting forth requirements for *Younger* abstention in civil cases); *see also Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013) (identifying the characteristics of civil enforcement actions subject to the *Younger* abstention doctrine).

Even assuming that the New York Convention of 1958 applies, it does not require that Green's action to enforce an international arbitration award be brought in federal court, especially where, as here, the state court had already conducted trial proceedings before Green raised the issue of arbitration. *See* 9 U.S.C. § 205 ("Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, *at any time before the trial thereof*, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.") (emphasis added)).

We reject as without merit Green's contentions that the arbitration award constituted a res judicata determination and that the district court improperly interfered with the docket records.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Green's motion to accept addendums (Docket Entry No. 10) is granted. All other pending motions and requests are denied.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

RICHARD LEE GREEN,

Plaintiff,

v.

DINH HOANG PHUONG,

Defendant.

Case No. 3:20-mc-00011-TMB

ORDER ON MOTION FOR EXPEDITED
CONSIDERATION [DKT. 3] AND
MOTION FOR CONFIRMATION [DKT. 4]

I. INTRODUCTION

The matter comes before the Court on an “Emergency [*sic*] Motion for Expedited [*sic*] Consideration to the Request for Confirmation of Indonesian Foreign Arbitrational Award” (“Motion for Expedited Consideration”) and a “Request for Expedited [*sic*] Confirmation of Indonesian Foreign Arbitrational Award” (“Motion for Confirmation”).¹ Defendant Dinh Hoang Phuong, through her counsel, Alaska Legal Services Corporation (“ALSC”), filed an Opposition with supporting exhibits.² Plaintiff Richard Lee Green then filed a Reply.³ The Court held hearings on the Motions on June 19, 2020, July 1, 2020, and July 8, 2020.⁴ The Motions are now ripe for

¹ Dkts. 3 (Motion); 4 (Motion). Although both Motions purport to be filed by the arbitrator “by and through his proxy Wayne Anthony Ross P.C.,” Attorney Ross clarified that he represents Plaintiff Richard Lee Green, who is the actual party in interest seeking to confirm and enforce the arbitration award in this Court.

² Dkts. 11 (Opposition); 12 (Opposition). Dockets 11 and 12 share an identical Opposition but attach different exhibits. The Court will consider all the exhibits in both dockets as support for Defendant’s Opposition but cite only to Docket 11 when referring to the pleading itself.

³ Dkt. 16 (Reply).

⁴ Dkts. 8 (Minute Entry); 19 (Minute Entry); 33 (Minute Entry).

resolution. For the reasons discussed below, the Motion for Confirmation is **DENIED** and any other pending motions, including the Motion for Expedited Consideration, are **DENIED as moot**.

II. BACKGROUND

Simply stated, this case arises from a contract the parties purportedly entered on August 28, 2014 (the “Contract”).⁵ However, the procedural posture and the record before this Court are rather convoluted. The tortuous record involves multiple parallel proceedings, including an ongoing divorce and child custody action in Alaska state court and an alleged Indonesian arbitration proceeding. The record also raises many questions and troubling allegations of potentially criminal conduct, perjury, and violations of the Alaska Rules of Professional Conduct.

A. The Purported Contract

The Contract, as submitted by Plaintiff, consists of three pages.⁶ Page 1 is titled, “Pre-Marital Agreement of Richard Lee Green and Dinh Hoang Phuong” and states that the parties voluntarily enter into the “Marriage Contract in hopes of growing a real relationship, establishing a family and working together for the benefit of each other and of any offspring that may or may not come out of this union.”⁷ The terms on this page broadly outline the assets and property each party brings into the marriage and set forth the division of assets, property, and obligations in the event either party chooses to leave the relationship.⁸ The terms also purport to govern the custody

⁵ Dkt. 1-2 (Contract).

⁶ *Id.* Defendant contends that she was only given the third page of the Contract to review and sign and it was her understanding that the “contract” between the parties consisted of just that one-page document. Dkt. 12-1 at 4 (State Court Pleading). The Court makes no findings as to what pages of the Contract were present at the time of signing and whether the Contract is enforceable.

⁷ *Id.* at 1.

⁸ *Id.*

and visitation rights for any children born from the relationship.⁹ The last paragraph of Page 1 states, “This agreement shall be binding in Indonesia, Vietnam, and The United States of America and any other country or state that Richard Lee Green may reside in.”¹⁰

Page 2 appears to be a photocopy of Defendant’s passport issued by the Socialist Republic of Vietnam.¹¹ Page 3 is titled, “Traditional Wedding vows and Commitment/Contract.”¹² This page appears to be a script of the parties’ exchange of vows and rings.¹³ The last paragraph appears to be an arbitration clause that subjects the Contract to “the Laws of God and the Holy Ordinance as found in the Holy Bible and general interpretations of the Presbyterian Faith” and specifically requires arbitration “to/by Jeffrey H. Klett and/or his successors and assignees.”¹⁴ It further states, “Both parties agree that any decision(s) by the arbitrator are absolutely binding and that a court of competent jurisdiction shall uphold any decision rendered by the arbitrator.”¹⁵

B. Plaintiff’s Motions Filed in this Court

On June 5, 2020, Attorney Ross, appearing as a “duly appointed proxy” for Reverend Timothy L. Sizemore, filed a “Notice of Filing a Foreign Arbitration Award 9 U.S.C. Chapter 2 — Convention on the Recognition and Enforcement of Foreign Arbitral Awards” and a

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* At the time, Mr. Klett was the President of the Soldiers of the Cross, a religious organization out of Alaska that sends missionaries, such as Plaintiff, abroad.

¹⁵ *Id.*

“Memorandum in Support of Confirmation of Indonesian Foreign Arbitrational Award” (together, the “Notice”).¹⁶ The Notice refers to the arbitration clause in the Contract and claims that a demand for arbitration was made in writing on March 26, 2020.¹⁷ Reverend Sizemore accepted the appointment on March 28, 2020.¹⁸ Reverend Sizemore purportedly issued a partial final award for jurisdiction and enforceability (“Partial Award”) on April 24, 2020, and issued a final award of all issues (“Final Award”) on May 18, 2020.¹⁹ The Notice seeks to confirm both the Partial Award and Final Award in this Court “for registration, confirmation and enforcement both here and abroad.”²⁰ The Notice was not filed with a certificate of service, indicating that it was filed *ex parte*.

On June 17, 2020, Plaintiff concurrently filed the Motion for Expedited Consideration and Motion for Confirmation.²¹ The Motion for Expedited Consideration seeks expedited confirmation of the Partial Award and Final Award “because the arbitrator has other time sensitive deadlines for filing in this multi-national award in other countries which will expire soon. The arbitrator

¹⁶ Dkts. 1 (Notice); 2 (Memorandum).

¹⁷ Dkt. 2 at 2.

¹⁸ *Id.* The Notice claims that on March 17, 2020, Dewa Gede Dalem, President of Soldiers of the Cross and successor to Jeffery H. Klett was initially appointed the arbitrator but due to geographic and language barriers, he asked Reverend Sizemore to act as the arbitrator. *Id.*; Dkt. 1-1 at 2 (Letter).

¹⁹ Dkts. 1 at 2; 1-3 (Partial Award); 1-4 (Final Award). The Partial Award and Final Award suffer from the same defect: it appears Reverend Sizemore signed both Awards on May 19, 2020, but the notary signed and dated the documents on May 29, 2020. Dkts. 1-3 at 21–22; 1-4 at 17–18.

²⁰ Dkt. 2 at 4.

²¹ Dkts. 3; 4.

must file the confirmed award in the Indonesian court by June 18, 2020.”²² The Motion for Expedited Consideration attaches an email from Reverend Sizemore expressing concern that the property issues at-hand span “three sperate [*sic*] countries and the value of the cargo in holding is very expensive and may be lost if it just sits.”²³ The Motion for Confirmation requests this Court confirm the Partial Award and Final Award under 9 U.S.C. § 207.²⁴ Without evidence or argument, Plaintiff asserts that the two Awards fall under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) and requests relief as soon as possible.²⁵ Neither Motion was filed with a certificate of service, again, indicating they were filed *ex parte*.

The underlying Final Award proffers “Findings of Fact,” “Conclusions of Law,” and award terms “[i]n the best interest of the children” based solely on information supplied by Plaintiff.²⁶ The Final Award includes allegations of domestic violence, child abuse, kidnapping, and fraud, all purportedly committed by Defendant.²⁷ The terms of the Final Award are separated into the following categories: A. Property Division; B. Debt Responsibilities; C. Legal Custody; D. Religious Upbringing; E. Physical Custody; F. Visitation; G. Vacations; H. Holidays; and

²² Dkt. 3 at 1.

²³ Dkt. 3-1 (Email).

²⁴ Dkt. 4 at 2.

²⁵ *Id.* See 9 U.S.C. § 201 et seq.

²⁶ Dkt.1-4 at 4–16. Reverend Sizemore testified that Plaintiff provided approximately 500 pages of evidence and legal authority for his review. In addition, Reverend Sizemore testified that because Defendant and ALSC did not submit any evidence, briefing, or proposed award terms and failed to appear at the arbitration hearings, the Final Award essentially issued by default based largely on Plaintiff’s proposed award terms.

²⁷ *Id.* at 5–6.

I. Birthdays.²⁸ The Final Award further assigns to Defendant financial responsibilities for the following expenses: Child Nurturing and/or Child Support; Educational Support; Cost of Living Adjustment/Maintenance; Medical and Dental Insurance; Attorney's Fees; and Arbitration Fees.²⁹ Of the 31 total pages, matters concerning child custody predominate the terms of the Final Award.

C. Initial Status Hearing

After a preliminary review of the Motions and Awards, the Court set a virtual Status Hearing for June 19, 2020.³⁰ The Court noted that it was unclear whether Defendant was aware of Plaintiff's filings in this case or whether she has current legal representation.³¹ Therefore, the Court ordered Plaintiff serve all materials in this case on Defendant and requested ALSC attend the hearing and report on the status of their representation.³²

Several issues were raised at the virtual Status Hearing on June 19, 2020.³³ Plaintiff argued for expedited consideration of the Motion for Confirmation because, according to Plaintiff, there was "cargo" being held in Indonesia and the Indonesian government would not release the "cargo" without a court order confirming the arbitration award.³⁴ ASLC confirmed that they represent

²⁸ *Id.* at 7–12.

²⁹ *Id.* at 12–15.

³⁰ Dkt. 5 (Text Order).

³¹ *Id.*

³² *Id.* Plaintiff subsequently filed a Certificate of Service at Docket 7 that does not comport with the Court's Order. The Certificate of Service was signed and dated by Attorney Ross on May 15, 2020, and does not attest to service of the filings in this case, including the two pending Motions. Dkt. 7 at 3.

³³ Dkt. 8 (Minute Entry).

³⁴ The record before the Court does not explain what the cargo contains or its relevance to this case. At the hearing, Plaintiff did not identify the nature of the cargo but argued for expedited consideration because the cargo was "spoiling." Neither the Partial Award nor Final Award

Defendant and informed the Court that the parties are actively litigating their divorce and child custody dispute in the Superior Court for the State of Alaska, Third Judicial District at Palmer.³⁵ In addition, Defendant had not had an opportunity to respond to the pending Motions in this case. Therefore, the Court set an in-person Motion Hearing on July 1, 2020, permitted Defendant additional time to file a response to the Motions, and ordered both parties provide the Court with all the relevant filings from the state court proceedings.³⁶ The Court also ordered Reverend Sizemore telephonically appear at the Motions Hearing.³⁷

D. Defendant's Opposition and Plaintiff's Reply

On June 26, 2020, Defendant filed her Opposition to the Motion for Expedited Consideration and Motion for Confirmation.³⁸ Defendant argues that the *Rooker-Feldman* doctrine bars Plaintiff from litigating the present issues in Federal Court because “[t]he Alaska Superior Court has already rejected plaintiff’s efforts at forcing this matter into arbitration.”³⁹ In support, Defendant attaches two Orders issued by the state court: (1) “Order Denying Defendant’s Motion to Order Arbitration and Motion to Stay Proceedings,” dated May 19, 2020; and (2) “Order

identify or allocate any pending cargo to the parties. The cargo’s sender, intended recipient, and purpose are unknown.

³⁵ *Id.* The state court case is captioned *Phuong Dinh Green v. Richard L Green*, No. 3PA-19-01073 CI.

³⁶ Dkt. 10 (Order).

³⁷ *Id.*

³⁸ Dkt. 11.

³⁹ *Id.* at 1. Plaintiff’s case initiating filings and subsequent motions do not reference the pending Alaska state court litigation. Defendant asserts that this failure to disclose violates Alaska Rule of Professional Conduct 3.3, regarding Candor Toward the Tribunal, and recommends referral of this matter to Bar Counsel under Alaska Rule of Professional Conduct 8.3(a). *Id.* at 1, n.1.

Denying Motions for Reconsideration Re: Arbitration,” dated June 22, 2020.⁴⁰ The first Order summarily denies Plaintiff’s attempt to compel arbitration.⁴¹ The second Order sets forth the background of the state proceedings and discusses the reasons to deny both Plaintiff’s motion to order arbitration and motion for reconsideration.⁴² The state court found that Plaintiff had waived his alleged right to arbitrate and, in light of the extensive motions practice already litigated in state court, ordering arbitration at that point in the case would be prejudicial to Defendant.⁴³

Plaintiff filed a Reply on June 28, 2020.⁴⁴ Plaintiff argues that he “is seeking to confirm a foreign arbitration award and [he] has never submitted that matter to any state court for confirmation.”⁴⁵ Therefore, Plaintiff concludes the *Rooker-Feldman* doctrine does not apply.⁴⁶ Plaintiff further argues that the Court must confirm the award because Defendant has failed to show that grounds for refusing to recognize or enforce the award exist.⁴⁷

⁴⁰ Dkts. 11-2 at 31 (State Court Order); 11-1 (State Court Order). In the state court litigation, the parties are named Phuong Dinh Green as the plaintiff and Richard Lee Green as the defendant. To avoid confusion, the Court refers to the parties by their respective posture in this case even when discussing the state proceedings.

⁴¹ Dkt. 11-2 at 31.

⁴² Dkt. 11-1.

⁴³ *Id.* at 4–6. However, the state court expressed that it made no finding as to the validity of the underlying Contract.

⁴⁴ Dkt. 16 (Reply).

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ *Id.* at 6–8.

E. Motions Hearing

The Court held the in-person Motions Hearing on July 1, 2020.⁴⁸ Reverend Sizemore appeared by video conference and testified as to his involvement in the underlying arbitration, including his background, his prior acquaintance with the parties, how he became the arbitrator, how he conducted the arbitration, and how he rendered the Partial Award and Final Award. After Reverend Sizemore's testimony, the Court granted Plaintiff's oral motion to continue the hearing.⁴⁹ The Court instructed the parties to notify the Court of any additional witnesses to be called and to file any additional relevant documents for the Court's review.⁵⁰

The Motions Hearing was continued to July 8, 2020.⁵¹ That morning, prior to the continued Motions Hearing, the Court received two unsolicited emails from Reverend Sizemore; both parties were copied on the emails.⁵² The first email attached a Microsoft Word document entitled, "Letter to judge regarding corrected award.docx." The second email attached the same letter as well as another Microsoft Word document entitled, "7.8.2020 GREEN CORRCTED [sic] FINAL ARBITRATION AWARD _ All Issues.docx." In the letter, Reverend Sizemore states that he corrected the arbitration award based on the Court's questions at the July 1, 2020 Motions Hearing.⁵³

⁴⁸ Dkt. 19 (Minute Entry). Plaintiff was unable to physically attend the Motions Hearing but appeared by video conference and was represented in-person by Attorney Ross.

⁴⁹ *Id.*

⁵⁰ *Id.* Defendant filed several exhibits from the state court docket, including an Order entering Rule 11 sanctions against Attorney Ross. Dkts. 21-1-21-9 (Exhibits); 21-4 at 24 (Rule 11 Order).

⁵¹ Dkt. 33 (Minute Entry).

⁵² *See* Dkt. 25-1 (Email with Attachments);

⁵³ Dkt. 25-2 (Letter).

That afternoon at the Motions Hearing, Plaintiff testified as to his relationship with Defendant and the nature of the Contract.⁵⁴ He repeatedly and alternately referred to the Contract as a “marriage contract,” “premarital agreement,” “prenuptial contract,” and “religious contract.” Plaintiff was also asked about his involvement, if any, in drafting documents for Reverend Sizemore in his capacity as arbitrator. The Court directly asked Plaintiff whether he was the author of the Partial Award, Final Award, or letter and corrected award received by email that morning. Plaintiff answered, “No.”

The Court then heard oral argument by both parties on the Motion for Confirmation.⁵⁵ Specifically, the Court posed questions concerning whether the Contract falls under the New York Convention—that is, whether any legal authority holds that a contract regarding divorce, child custody, and division of marital property may be considered a “commercial agreement” and may be subject to arbitration under the New York Convention. Despite indicating the authority existed, Plaintiff’s counsel was unable to locate the citations to such authority in his files during the hearing. Therefore, the Court allowed Plaintiff to submit a supplemental filing for the limited purpose of identifying any legal authority responsive to the Court’s question. The Court instructed Plaintiff to note the relevant legal authority in a summary, not to exceed one page, filed by 12:00 PM on July 9, 2020. Plaintiff was admonished that the filing was not an opportunity to reargue his position and that any filing that failed to conform with the instructions would be stricken.

⁵⁴ *Id.*

⁵⁵ *Id.*

F. Subsequent Filings

Plaintiff failed to file the requested supplemental authority before 12:00 PM on July 9, 2020. Instead, at 1:51 PM, on July 9, 2020, Plaintiff filed four separately titled memoranda spanning 10 pages that go beyond simply identifying relevant authority and instead attempt to expand the substantive answers given by Plaintiff at the hearing.⁵⁶ Because the memoranda failed to comply with the Court's specific instructions, the entire filing was stricken and the Court took the Motion for Expedited Consideration and Motion for Confirmation under advisement.⁵⁷ On July 10, 2020, Plaintiff filed a "Request for Clarification."⁵⁸ It appears from this filing that Plaintiff did not access the Court's Order at Docket 29 but rather read only the associated text entry, causing Plaintiff's confusion as to the reasoning for the Order. On July 13, 2020, Plaintiff filed a "Memorandum [*sic*] Related to the New York Convention."⁵⁹ This single-page memorandum appears to be Plaintiff's revised attempt to submit the requested supplemental authority. However, the memorandum was filed without first obtaining leave of the Court, four days after the Court's explicit deadline and after the Court had struck Plaintiff's prior memoranda and took the Motions under advisement.

⁵⁶ Dkt. 27 (Memoranda). The individual memoranda are titled, "Memorandum on Arbitration and Custody," "Memorandum Related to Commerce," "Memorandum Related to Pre-Nuptial Agreements," and "Memorandum Related to Religious Arbitration Tribunals." However, they were filed by Plaintiff as a single docket entry and docketed altogether as "Fourth MOTION case law brief by Richard Lee Green." *See* Dkt. 27.

⁵⁷ Dkt. 29 (Order).

⁵⁸ Dkt. 30 (Request). Plaintiff docketed this filing as "Notice Request for Clarification" rather than categorizing it as a motion.

⁵⁹ Dkt. 32 (Memorandum). Plaintiff docketed this filing as "Fourth Motion to Amend/Correct 29 Order,, [*sic*] Terminate Motions, Memorandum for the NY Convention (1pg) by Richard Lee Green." The underlying memorandum does not argue a motion to amend or correct or move for any other relief.

Also on July 9, 2020, Defendant filed a “Notice of Authorship,” in which Defendant attached a screenshot of the document properties for the letter sent via email by Reverend Sizemore on July 8, 2020.⁶⁰ The screenshot shows that the document was authored by “RL Green” and last modified by “Tim Sizemore.”⁶¹ Defendant argues that the screenshot “shows and strongly suggests that [Plaintiff] committed perjury to this court” by denying that he drafted the letter.⁶² In response, Plaintiff filed an Affidavit explaining that he “wrote out” and emailed his settlement ideas and proposed final arbitration award to Reverend Sizemore.⁶³ Plaintiff states that Partial and Final Awards do not contain all of his proposed provisions and also include “findings of facts” and “conclusions of law” that Plaintiff did not propose.⁶⁴ Plaintiff also filed an alleged email exchange between Attorney Ross and Reverend Sizemore concerning the authorship of documents.⁶⁵ According to the email, Reverend Sizemore allegedly used a document Plaintiff sent to him to draft the corrected arbitration award.⁶⁶ Finally, on July 13, 2020, Plaintiff filed a series of exhibits,

⁶⁰ Dkts. 25 (Notice), 25-3 at 26 (Screenshot).

⁶¹ Dkt. 25-3 at 26.

⁶² Dkt. 25 at 2. However, Defendant does not request any relief based on this troubling assertion.

⁶³ Dkt. 26 at 2 (Affidavit).

⁶⁴ *Id.* Plaintiff’s affidavit focuses on the drafting process of the arbitration awards but does not address why he appears to be the author of the letter purportedly sent by Reverend Sizemore on July 8, 2020.

⁶⁵ Dkt. 28 (Email). The email was filed by itself, without a supporting affidavit or pleading to provide context or foundation. Such a filing does not comport with the Federal Rules of Evidence.

⁶⁶ *Id.* The email does not address the authorship of the July 8, 2020 letter.

including what appears to be another email purportedly sent by Reverend Sizemore and a final corrected arbitration award.⁶⁷

III. LEGAL STANDARD

The *Rooker-Feldman* doctrine bars federal courts “from hearing de facto appeals from state-court judgments” and “second-guessing state court decisions.”⁶⁸ The doctrine “is confined to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”⁶⁹ Under the *Rooker-Feldman* doctrine, a federal court action must be dismissed for lack of subject matter jurisdiction if the claims raised “are ‘inextricably intertwined’ with the state court’s decisions such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules.”⁷⁰

Similarly, the *Younger* abstention doctrine “is grounded in a ‘longstanding public policy against federal court interference with state court proceedings.’”⁷¹ The doctrine applies to three categories of cases: “(1) parallel, pending state criminal proceedings, (2) state civil proceedings that are akin to criminal prosecutions, and (3) state civil proceedings that implicate a State’s

⁶⁷ Dkt. 31 (Exhibits). As before, Plaintiff filed these exhibits in isolation and without a supporting affidavit or pleading to provide context or foundation.

⁶⁸ *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003).

⁶⁹ *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005).

⁷⁰ *Bianchi*, 334 F.3d at 898 (citing *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983)).

⁷¹ *Herrera v. City of Palmdale*, 918 F.3d 1037, 1043 (9th Cir. 2019) (quoting *Younger v. Harris*, 401 U.S. 37, 43 (1971)).

interest in enforcing the orders and judgments of its courts.”⁷² Abstention in civil cases is required where the state proceedings: “(1) are ongoing; (2) implicate ‘important state interests’; and (3) provide an adequate opportunity to raise federal questions.”⁷³ The Ninth Circuit has also identified “an implied fourth requirement that (4) the federal court action would enjoin the proceeding, or have the practical effect of doing so.”⁷⁴

IV. ANALYSIS

The interplay and competing timelines of Plaintiff’s filings in this case and in the ongoing state action render the *Rooker-Feldman* doctrine applicable here. Indeed, the issues raised by the Motion for Confirmation are inextricably intertwined with the state court’s decisions. The state court is currently presiding over the parties’ divorce and child custody disputes—the very issues addressed by the Final Award Plaintiff now seeks to confirm—and the state court explicitly ruled against arbitration.⁷⁵ It appears Plaintiff may have intended the present Motion for Confirmation to serve as a “de facto appeal” of the state court’s decision to deny his motion to order arbitration. Plaintiff initiated the federal action and moved to confirm an arbitration award after and in spite of the state court’s denial of arbitration.⁷⁶ But Plaintiff also moved the state court for

⁷² *Id.*; *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014).

⁷³ *Potrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 882 (9th Cir. 2011) (citing *Middlesex Cty Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982) (extending *Younger* to civil proceedings “when important state interests are involved.”)); *Herrera*, 918 F.3d at 1044.

⁷⁴ *Potrero Hills*, 657 F.3d at 882 (internal quotations omitted).

⁷⁵ *See* Dkt. 11-2 at 31.

⁷⁶ The state court denied Plaintiff’s motion to order arbitration on May 19, 2020. Dkt. 11-2 at 31. Plaintiff initiated this case on June 5, 2020 and filed the Motion for Confirmation on June 17, 2020. Dkts. 1; 4.

reconsideration of that denial, which remained pending as Plaintiff began litigating this case.⁷⁷ Furthermore, Plaintiff did not even reference the ongoing state court action in his filings to this Court.⁷⁸ Plaintiff's Motion for Confirmation may well have been a disingenuous attempt to circumvent the state court's decisions, hoping this Court would confirm an arbitration that the state court had already rejected. Thus, Plaintiff's actions seek a "de facto appeal" that would subject this case to the *Rooker-Feldman* doctrine.⁷⁹ However, because reconsideration of the motion to order arbitration was before the state court, there may not have been a final state court judgment for this Court to review when Plaintiff first filed the Motion for Confirmation. Nonetheless, this Court need not decide whether a final state court judgment had been issued because there is a more appropriate resolution to this case than the *Rooker-Feldman* doctrine.

The Court must abstain in this case pursuant to the *Younger* doctrine. The underlying arbitration award and ongoing state court proceedings clearly implicate an important state interest: domestic relations. "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States."⁸⁰ Generally,

⁷⁷ See 11-1. Plaintiff filed the motion for reconsideration on May 26, 2020, and the state court denied the motion for reconsideration on June 22, 2020.

⁷⁸ See 11 at 1.

⁷⁹ In his Reply, Plaintiff argues that the *Rooker-Feldman* doctrine does not apply because he has never sought to confirm a foreign arbitration award in any state court. Dkt. 16 at 4. Plaintiff states he "has not received any judgment from any state court, plaintiff makes no appeal to this court in regards to any state action or judgments." *Id.* at 5. This argument and recitation of facts blatantly ignores the fact that the Alaska state court specifically stayed any attempts to arbitrate and denied the motion to order arbitration. Dkt. 11-1 at 3. Yet Plaintiff proceeded to "arbitrate" the issues despite the state court's Order.

⁸⁰ *In re Burrus*, 136 U.S. 586, 593-94 (1890).

federal courts are divested of power to issue divorce, alimony, and child custody decrees.⁸¹ Moreover, the parties have been litigating the divorce and child custody issues before the state court for over a year and a half.⁸² Plaintiff has had an adequate opportunity to litigate his claims, including any federal claims.⁸³ Then, Plaintiff unilaterally proceeded to arbitrate these same issues in direct contravention of the state court's Order denying arbitration. For this Court to confirm the arbitration awards, it would not only validate Plaintiff's subversive conduct but also enjoin and unravel the state court's ongoing proceedings. This is precisely the type of case suited to *Younger* abstention.⁸⁴ Therefore, this case must be dismissed.

Notwithstanding abstention, and for the sake of a more complete analysis, the Court finds that the Partial Award and Final Award are not subject to the New York Convention and may not be confirmed pursuant to 9 U.S.C. § 207.⁸⁵ The New York Convention enforces "[a]n arbitration

⁸¹ *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992); *Buechold v. Ortiz*, 401 F.2d 371, 372 (9th Cir. 1968) ("[I]t is well recognized that the federal courts must decline jurisdiction of cases concerning domestic relations when the primary issue concerns the status of parent and child or husband and wife."); *Thompson v. Thompson*, 798 F.2d 1547, 1558 (9th Cir. 1986) ("Even when a federal question is presented, federal courts decline to hear disputes which would deeply involve them in adjudicating domestic matters.") (collecting cases).

⁸² See Dkt. 11-1 at 1 ("The Complaint for Divorce was filed on January 17, 2019.").

⁸³ *Id.* at 1–2, n.1&2. By the time Plaintiff notified the State Court of his intent to pursue arbitration, he had filed 17 motions and the State Court had held seven days of trial.

⁸⁴ See *H.C. ex rel Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000) (dismissing a child custody case under *Younger*). See also *Safoune v. Fleck*, 226 Fed.Appx. 753 (9th Cir. 2007) (dismissing claims for injunctive or declaratory relief under *Younger* due to pending juvenile dependency case pending in state court).

⁸⁵ The Court makes no findings as to the validity of the underlying Contract or arbitration proceedings. The Court makes no findings as to whether the awards resulting from arbitration proceedings conducted in the United States, with all participants residing in the United States, are considered a "foreign arbitral awards" under the New York Convention. The Court also declines to analyze whether grounds for refusal or deferral of recognitions or enforcement of the arbitration

agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as *commercial*.”⁸⁶ Court finds no legal authority or evidence in the record to support that the marital contract in this case evidences a “transaction involving commerce.”⁸⁷ The parties, citizens of different countries, entered into a premarital agreement which attempted to delineate ownership of assets and property in light of community property laws. Routine division of marital property is generally not considered a commercial transaction. Furthermore, as described above, child custody concerns—not international commerce—predominate the Contract and the resultant Final Award. Therefore, the Court is not persuaded that the Contract is of a commercial nature such that the New York Convention or 9 U.S.C. § 207 applies.

In any event, in light of the ongoing state court divorce and child custody proceedings, this Court shall abstain from adjudicating the Motion for Confirmation on the merits because the underlying arbitration implicates important state interests.

award apply. *See* 9 U.S.C. § 207. Here, the Court simply addresses the threshold issue: whether the purported Contract is considered a commercial agreement.

⁸⁶ 9 U.S.C. § 202 (emphasis added).

⁸⁷ *See* 9 U.S.C. § 2.

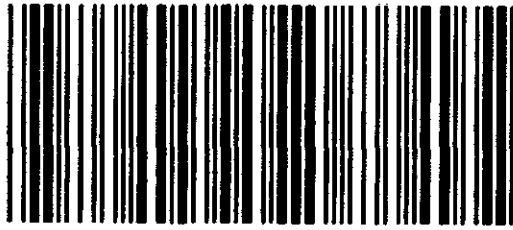
V. CONCLUSION

The Motion for Confirmation at Docket 4 is **DENIED**. The Motion for Expedited Consideration at Docket 3 and memorandum docketed as a motion at Docket 32 are **DENIED as moot**. The Clerk of the Court is directed to **DISMISS** this case. In order to avoid any additional confusion, the parties are directed to provide a copy of this Court's docket and this Order to the state court presiding over their divorce and child custody action.

IT IS SO ORDERED.

Dated at Anchorage, Alaska, this 29th day of July, 2020.

/s/ Timothy M. Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE



DOCUMENT INFORMATION

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CHAPTER : Chapter XXII. Commercial Arbitration

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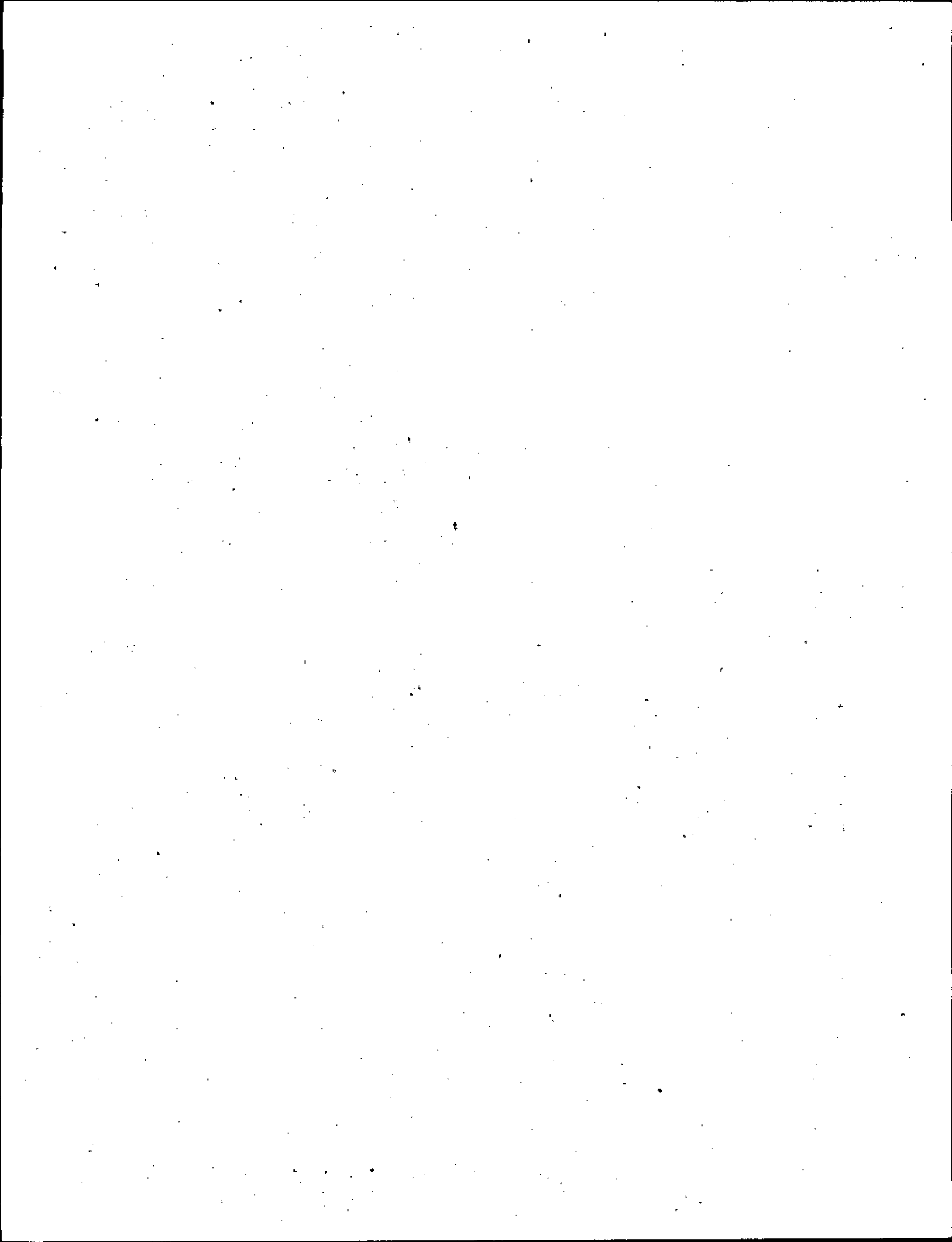


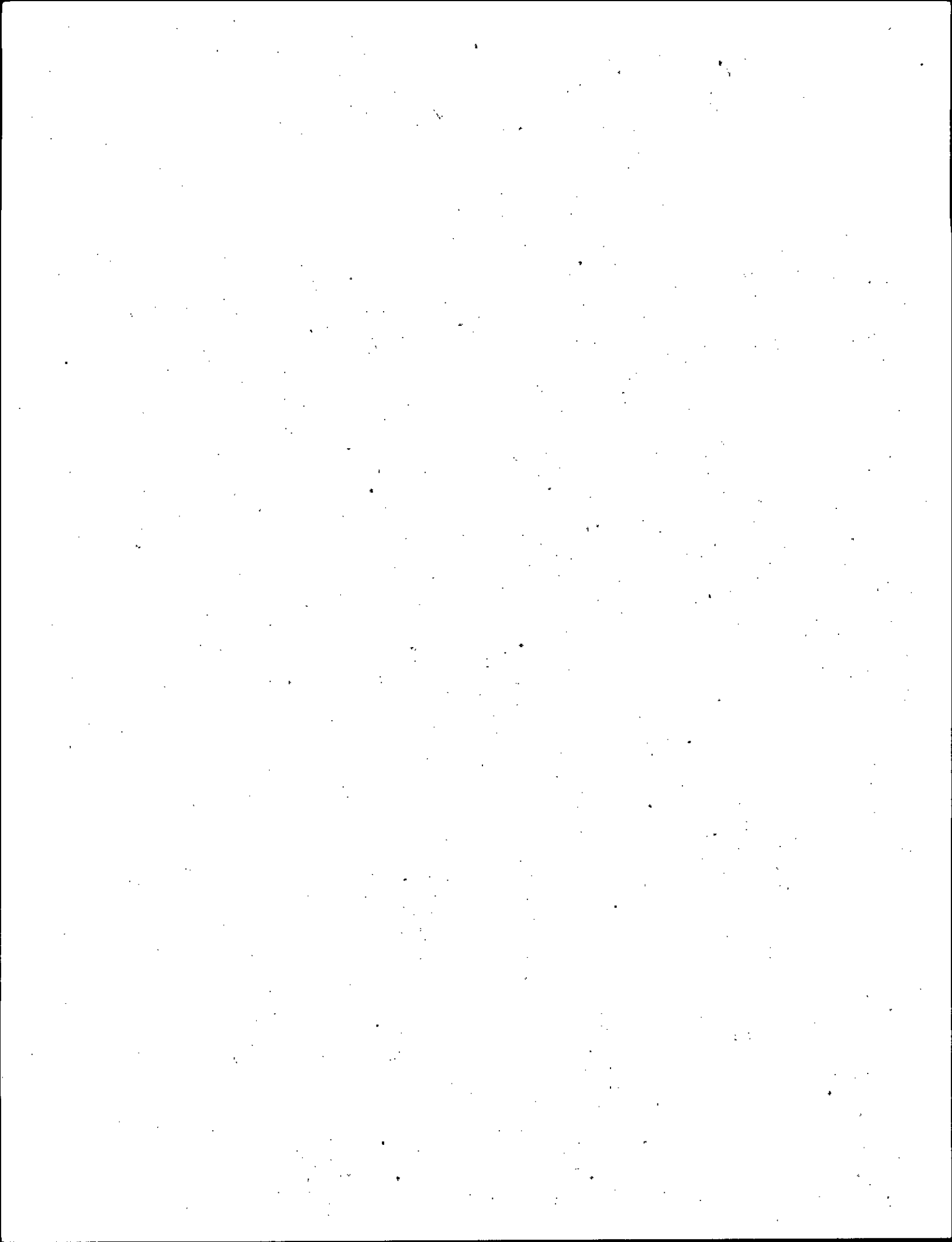
**UNITED NATIONS CONFERENCE
ON INTERNATIONAL COMMERCIAL ARBITRATION**

**CONVENTION
ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS**



UNITED NATIONS
1958





CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal

relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforce-

ment shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains

decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive

any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which

it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting

State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which

recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

APPENDIX J

The Codified Statutes on U.S. Code: Title 9 CHAPTER 2—CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (§§ 201 – 208)

9 U.S. Code § 201 - Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S. Code § 202 - Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S. Code § 203 - Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S. Code § 204 - Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S. Code § 205 - Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S. Code § 206 - Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 693.)

9 U.S. Code § 207 - Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other

party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 693.)

9 U.S. Code § 208 - Application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States. This chapter applies to the extent that this chapter is not in conflict with chapter 4.

(Added Pub. L. 91-368, § 1, July 31, 1970, 84 Stat. 693; amended Pub. L. 117-90, § 2(b)(1)(B), Mar. 3, 2022, 136 Stat. 27.)