UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LIUDMILA NEVAREZ,	§	
	§	
Plaintiff,	§	
v.	§	
	§	**EP-22-CV-00442-DCG**
RUBEN NEVAREZ,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION REGARDING JURISDICTION

The Court ordered the parties to brief

(1) "whether this Court may exercise jurisdiction over this case—and, even if it may, whether it should;" and

(2) "whether this Court should stay this case until the [parties'] divorce proceedings are over."

Briefing Order, ECF No. 20, at 2.[1] Having reviewed the parties' submissions[2] and the applicable law, the Court concludes that it may and should exercise jurisdiction over this case, and that a stay is unwarranted.

I. BACKGROUND

The federal Immigration and Nationality Act lists several categories of aliens who are "ineligible to be admitted to the United States." 8 U.S.C. § 1182(a). As relevant here, "[a]ny

[1] Page citations in this Memorandum Opinion refer to the page numbers assigned by the Court's CM/ECF system, not the document's internal pagination.

[2] For the reasons stated previously, the Court did not consider the arguments Defendant raised in a surresponse he filed without the Court's permission. *See* Notice Regarding Surresponse, ECF No. 27. By the parties' agreement, however, the Court did consider Defendant's divorce lawyer's Declaration, which Defendant attached to his surresponse. Order Granting Def.'s Mot. Consider Decl., ECF No. 30.

alien who . . . is likely at any time to become a public charge"—that is, who is likely to depend on public benefits for her subsistence[3]—is "inadmissible" to the United States. *Id.* § 1182(a)(4).

Certain aliens "seeking to immigrate to the United States based on their family ties" are presumptively inadmissible as a public charge unless one of several exceptions applies.[4] For example, the public charge prohibition does not render a family-sponsored immigrant inadmissible if "the person petitioning for the alien's admission . . . has executed an affidavit of support"—also known as a "Form I-864" affidavit[5]—"with respect to such alien." 8 U.S.C. § 1182(a)(4)(C)(ii). An affidavit of support is a "contract between the sponsor" on one side "and both the United States Government and the sponsored immigrant" on the other[6] whereby "the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line." *Id.* § 1183a(a)(1). "[A] sponsored alien" may bring "[a]n action to enforce an affidavit of support . . . against the sponsor in any appropriate court." *Id.* § 1183a(e).

Plaintiff Liudmila Nevarez alleges that her spouse, Defendant Ruben Nevarez, executed such an Affidavit of Support for her benefit. Compl., ECF No. 4, at 9; Aff. Support at 15–24. Plaintiff and Defendant are now estranged, Compl. at 2, 10, and Defendant has filed for divorce in state court, *see* Divorce Case Docket, ECF No. 23-2. The divorce proceedings currently remain pending. *See* Divorce Case Docket; Kubinski Decl., ECF No. 26-1, at 2.

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[3] *See, e.g.*, *Mao v. Bright*, --- F. Supp. 3d ----, 2022 WL 17546712, at *1 (S.D. Ohio Dec. 9, 2022).

[4] *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 53 (2d Cir. 2020); *Belevich v. Thomas*, 17 F.4th 1048, 1050 (11th Cir. 2021); 8 U.S.C. § 1182(a)(4)(C).

[5] *See, e.g.*, *Belevich*, 17 F.4th at 1050.

[6] *E.g.*, *Shumye v. Felleke*, 555 F. Supp. 2d 1020, 1023 (N.D. Cal. 2008); *see also* 8 U.S.C. § 1183a(a)(1) (characterizing the affidavit of support "as a contract"); Aff. Support, ECF No. 4, at 20 (the specific Affidavit of Support that Defendant executed for Plaintiff's benefit, which explicitly characterizes itself as "a contract between [Defendant] and the U.S. Government").

Plaintiff claims that Defendant "has failed to provide [her] with the basic level of financial support [he] promised in the Affidavit of Support." Compl. at 2. Plaintiff therefore filed this federal lawsuit against Defendant to enforce that obligation. *See generally id.*

In his Answer to Plaintiff's Complaint, Defendant asserted that "this Court has no jurisdiction over this matter" because "[t]here is a pending divorce proceeding in Texas State Court that has jurisdiction over the support issues between Plaintiff and Defendant." Answer, ECF No. 19, at 12. Because a federal court must "decide, *sua sponte* if necessary, whether it has jurisdiction before" reaching a case's merits, *e.g.*, *Filer v. Donley*, 690 F.3d 643, 646 (5th Cir. 2012), the Court ordered the parties to brief Defendant's challenges to the Court's jurisdiction, *see generally* Briefing Order.

II. DISCUSSION

A. Federal Question Jurisdiction

Federal courts have limited subject matter jurisdiction. *E.g.*, *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). A federal court "must presume that a suit lies outside this limited jurisdiction" unless "the party seeking the federal forum"—here, Plaintiff—proves that the court may permissibly exercise subject matter jurisdiction over the case. *See id.*

One potential basis for federal subject matter jurisdiction—and the only one available here[7]—is "federal question jurisdiction," which allows federal courts to adjudicate "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "Generally, a case arises under federal law only where a federal question is presented on the face of a well-pleaded complaint"—*i.e.*, "a complaint that asserts the plaintiff's right to recovery based on federal law." *La. Indep. Pharmacies Ass'n v. Express Scripts, Inc.*, 41 F.4th 473, 478

[7] For instance, neither party argues that the Court may exercise "diversity jurisdiction" over this case. *See* 28 U.S.C. § 1332. Nor has any party identified any other potential basis for federal subject matter jurisdiction here.

(5th Cir. 2022). Thus, "[f]ederal question jurisdiction exists when a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 172 (5th Cir. 2009).

Plaintiff maintains that her suit to enforce the Affidavit of Support arises under federal law, and that the Court therefore has federal question jurisdiction over her claims.[8] Br., ECF No. 21, at 5; Compl. at 2. Although Defendant does not appear to dispute that Plaintiff's cause of action arises under federal law, *see generally* Resp., the Court must independently determine whether that is true, *see, e.g.*, *United States v. Cotton*, 535 U.S. 625, 630 (2002) ("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived.").

[8] Defendant appears to think Plaintiff is arguing—erroneously—that federal courts have *exclusive* jurisdiction to adjudicate her claim, to the exclusion of the state courts. *See* Resp., ECF No. 24, at 1 ("Plaintiff would like this Court to believe that Federal Court is the only forum where the enforcement of the Affidavit of Support can be heard."); *id.* at 6 ("Plaintiff cannot create exclusive federal jurisdiction by purposely not asserting her rights in State Court."); *see also Mao*, 2022 WL 17546712, at *4 ("Defendant correctly notes that federal courts do not have exclusive jurisdiction over I-864 enforcement actions.").

The Court does not interpret Plaintiff's argument that way. The Court instead understands Plaintiff to be arguing that federal and state courts have *concurrent* jurisdiction over Affidavit of Support enforcement actions, and that this Court must exercise its federal question jurisdiction over this case because Plaintiff chose to file it in federal rather than state court. *See* Reply, ECF No. 25, at 2; *see also, e.g.*, *Iannuzzelli v. Lovett*, No. 08-23473, 2009 WL 10667091, at *3 (S.D. Fla. May 7, 2009) (concluding that 8 U.S.C. § 1183a(e) "expressly contemplates concurrent jurisdiction of state or federal courts" to hear actions to enforce an affidavit of support); *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 378 (2012) ("In cases arising under federal law, . . . there is a deeply rooted presumption in favor of concurrent state court jurisdiction, rebuttable if Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim." (cleaned up)).

Courts have disagreed whether a suit to enforce an affidavit of support arises under federal law.[9] It doesn't appear that the Fifth Circuit has yet decided that question.

This Court adopts the majority view that an action to enforce an affidavit of support arises under federal law, and that federal courts therefore have subject matter jurisdiction over such cases.[10] Plaintiff invokes a federal statute—namely, 8 U.S.C. § 1183a—as the legal basis for her claim. *See* Compl. at 2; *see also* 8 U.S.C. § 1183a(e) ("An action to enforce an affidavit of support . . . may be brought against the sponsor in any appropriate court . . . . by a sponsored alien, with respect to financial support."). "The right of support conferred by" that federal statute "exists apart from whatever rights [Plaintiff] might or might not have under [state] divorce law." *Wenfang Liu v. Mund*, 686 F.3d 418, 419–20 (7th Cir. 2012). Thus, but for the federal statute creating the Affidavit of Support, the rights Plaintiff seeks to vindicate in this lawsuit would not exist.[11] Therefore, on its face, Plaintiff's Complaint "asserts [a] right to recovery based on federal law." *See La. Indep. Pharmacies Ass'n*, 41 F.4th at 478; *see also, e.g.*, *Al-Mansour*, 2011

[9] For cases answering that question "yes," see, e.g., *Wenfang Liu v. Mund*, 686 F.3d 418, 419–20 (7th Cir. 2012); *Madrid v. Robinson*, 218 F. Supp. 3d 482, 483 (W.D. Va. Oct. 31, 2016); *Al-Mansour v. Shraim*, No. CCB-10-1729, 2011 WL 345876, at *3 (D. Md. Feb. 2, 2011); *Burkhalter v. Burkhalter*, No. 19-272, 2020 WL 1659263, at *5 (C.D. Cal. Feb. 28, 2020); *Greiner v. De Capri*, 403 F. Supp. 3d 1207, 1214–19 (N.D. Fla. 2019).

For cases answering that question "no," see, e.g., *Winters v. Winters*, No. 6:12-cv-536, 2012 WL 13137011, at *1–4 (M.D. Fla. Apr. 25, 2012), *report and recommendation adopted by* 2012 WL 1946074 (M.D. Fla. May 30, 2012); *Ivanoff v. Schmidt*, No. 17-cv-01563, 2018 WL 1468559, at *3 (D. Colo. Mar. 23, 2018).

[10] *See Madrid*, 218 F. Supp. 3d at 487–88 (noting that "the vast majority of courts who have addressed this subject matter jurisdiction issue" have concluded that a lawsuit to enforce an affidavit of support under 8 U.S.C. § 1183a "arises under federal law within the meaning of" the federal question jurisdiction statute).

[11] *See, e.g.*, *Greiner*, 403 F. Supp. 3d at 1217 ("The cause of action asserted by Greiner was expressly created by a federal statute; the statute created a federal right that otherwise did not exist; and federal law provides an essential element of the claim . . . Accordingly, Greiner's action [to enforce an affidavit of support] clearly is one that arises under federal law insofar as federal law created his claim and created the right that is the basis of his claim, and federal law provides the substantive rules that must be applied in this case.").

WL 345876, at *3 ("This court has subject matter jurisdiction over this case [to enforce an affidavit of support] because [the plaintiff's] claim involves a federal statute.").

Courts reaching the opposite conclusion have reasoned that an action to enforce an affidavit of support is, at bottom, a breach of contract claim, and "[a] breach of contract claim is a creature of *state* law." *See Winters*, 2012 WL 13137011, at *4 (emphasis added).[12] Thus, say these courts, such actions "do[] not involve the validity, construction or effect of . . . federal law," and therefore do not give rise to federal question jurisdiction. *Id.*

The Court respectfully disagrees. As the Eleventh Circuit has observed, federal law—namely, 8 U.S.C. § 1183a and its implementing regulations—"define the scope of the sponsors' obligations" under an affidavit of support; the contract itself merely "incorporates [the] statutory obligations and records the sponsors' agreement to abide by them." *Belevich*, 17 F.4th at 1051 (cleaned up).[13] Thus, a suit to enforce an affidavit of support *does* "involve the validity, construction or effect of . . . federal law;" it does not merely "involve[] construction of [a] contract." *Contra Winters*, 2012 WL 13137011, at *4. Furthermore, the federal statute "gives the sponsored immigrant enforcement rights that he would not necessarily have under contract law." *Belevich*, 17 F.4th at 1051. This Court therefore agrees that "federal law, not state contract law, governs" the enforcement of an affidavit of support, *id.*,[14] and that federal courts consequently have federal question jurisdiction over such enforcement actions.[15]

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[12] *See also, e.g.*, *Ivanoff*, 2018 WL 1468559, at *2–3 (following *Winters*).

[13] Because the Middle District of Florida is in the Eleventh Circuit, the Court also questions whether *Winters* survives the Eleventh Circuit's subsequent decision in *Belevich*.

[14] *See also, e.g.*, *Yaguil v. Lee*, No. 2:14-cv-00110, 2014 WL 3956693, at *2 (E.D. Cal. Aug. 13, 2014) (agreeing that "federal law, not [state] law, governs the enforcement of an I-864 Affidavit.").

[15] *See, e.g.*, *Burkhalter*, 2020 WL 1659263, at *5 ("The I-864 affidavit is a contract between a sponsor and the United States, and is enforceable pursuant to federal statute. An enforcement action necessarily involves the construction of federal law, including the INA and the code of federal

The fact that an affidavit of support is a contract between the sponsor and the U.S. Government—albeit one that the sponsored beneficiary also enjoys the statutory right to enforce—bolsters that conclusion.[16] Ordinarily, "[o]bligations to . . . the United States under its contracts are governed exclusively by *federal* law," not state law. *Univ. Tex. Sys. v. United States*, 759 F.3d 437, 443 (5th Cir. 2014) (emphasis added). Thus, a beneficiary's suit to enforce a sponsor's obligations to her and the federal government under an affidavit of support arises under federal law and thus confers federal subject matter jurisdiction. *Cf. Clem Perrin Marine Towing, Inc. v. Pan. Canal Co.*, 730 F.2d 186, 189 (5th Cir. 1984) ("[F]ederal common law governs the construction of government contracts in the usual case, and there is federal question jurisdiction over cases arising under federal common law." (internal citations omitted)).

Moreover, the *Winters* court's conclusion that a claim for a breach of an affidavit of support arises under state law rather than federal law—even though "the contract itself was anticipated by a federal statute"—does not comport with Supreme Court precedent. *See Winters*, 2012 WL 13137011, at *4 (emphasis added). In *Jackson Transit Authority*, the Supreme Court stated that "suits to enforce contracts contemplated by federal statutes" may indeed "set forth federal claims," such that "private parties in appropriate cases may sue in federal court to enforce contractual rights created by" those statutes. *Jackson Transit Auth. v. Loc. Div. 1285*, 457 U.S. 15, 22 (1982).[17]

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regulations. Accordingly, the Court concludes it has federal question jurisdiction to hear this matter." (internal citations omitted)).

[16] *See supra* note 6 and accompanying text.

[17] *See also, e.g.*, *Cal. Hosp. Ass'n v. Maxwell-Jolly*, 776 F. Supp. 2d 1129, 1151 (E.D. Cal. 2011) ("The Supreme Court has long recognized that suits to enforce contracts contemplated by federal statutes may set forth federal claims and that private parties in appropriate cases may sue in federal court to enforce contractual rights created by federal statutes. Furthermore, cases involving the rights or obligations of the United States or one of its agents under a contract, entered into under authority conferred by federal statute, are governed by federal law. Accordingly, where the subject contract is entered into pursuant to authority conferred by a federal statute and the parties' rights derive from a

"[T]he critical factor" when determining whether such a claim arises under federal law "is the congressional intent behind the [statutory] provision at issue." *Id.* So long as "Congress intended that" such contracts "be creations of federal law, and that the rights and duties contained in those contracts be federal in nature," then the suit "states federal claims" rather than claims under state law. *Id.* at 23 (cleaned up).

To conduct that inquiry here, the Court begins—and, in this case, ends[18]—"with the language of the statute itself." *See id.* 8 U.S.C. § 1183a defines what an affidavit of support is: "a contract . . . that is legally enforceable against the sponsor by the sponsored alien, the Federal Government," and various other entities. 8 U.S.C. § 1183a(a)(1). The affidavit of support is thus a "creation[] of federal law" that would not exist had Congress not enacted 8 U.S.C. § 1183a.[19] Furthermore, by painstakingly specifying in the statutory text the terms those contracts must have, Congress clearly intended "that the rights and duties contained in those contracts be federal in nature" rather than governed by state law. *See Jackson Transit Auth.*, 457 U.S. at 23. To illustrate, 8 U.S.C. § 1183a explicitly specifies:

(1) the sponsor's obligations under the contract;[20]

(2) how long the contract remains enforceable;[21]

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federal source, federal law controls the enforcement and construction of the agreement. Any claim related to such a contract arises under federal law for purposes of 28 U.S.C. § 1331." (cleaned up)).

[18] The Court thus need not analyze the statute's legislative history. *See Jackson Transit Auth.*, 457 U.S. at 24 (consulting the relevant statute's legislative history only after determining that "the statutory language supplie[d] no definitive answer").

[19] *See Jackson Transit Auth.*, 457 U.S. at 23; *see also, e.g.*, *Greiner*, 403 F. Supp. 3d at 1217 (noting that 8 U.S.C. § 1183a "created a federal right that otherwise did not exist").

[20] *See, e.g.*, 8 U.S.C. § 1183a(a)(1)(A) (requiring the sponsor to "agree[] to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line"); *id.* § 1183a(a)(1)(C) (specifying that the sponsor must "agrees to submit to the jurisdiction of any Federal or State court for the purpose of" certain reimbursement actions by the government); *id.* § 1183a(d) (requiring the sponsor to notify the government if his address changes).

[21] *See id.* § 1183a(a)(2)–(3).

(3) that the sponsored alien may invoke enforcement remedies under federal law in addition to those available under state law;[22] and

(4) the definitions of certain contractual terms.[23]

Thus, the federal statute, and "not state contract law," defines "the scope of the sponsors' obligations" under the affidavit of support.[24] *Belevich*, 17 F.4th at 1051. The Court may therefore exercise federal question jurisdiction over this case unless some exception to that jurisdiction applies.

B. The Domestic Relations Exception

Defendant argues that, because this case implicates domestic relations between spouses, this Court lacks jurisdiction to adjudicate the parties' dispute, and must leave its resolution to the state divorce court. Resp. at 4.

Defendant is correct that there is a "domestic-relations exception to federal jurisdiction." *E.g.*, *Escalante v. Lidge*, 34 F.4th 486, 490 (5th Cir. 2022). However, that exception only applies to cases based on *diversity* jurisdiction;[25] "it has no application where . . . there exists an independent basis for federal jurisdiction," such as federal question jurisdiction. *United States v.*

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[22] *See id.* § 1183a(c) ("Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of Title 28 [of the U.S. Code], as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law.").

The Court agrees with the Eleventh Circuit that this provision's reference to state law merely "ensure[s] . . . that an enforcing party . . . has access to state law *remedies* to enforce a judgment against the sponsor;" it does not "incorporate state law in defining the *scope of a sponsor's obligation* to provide financial support." *Belevich*, 17 F.4th at 1051 (emphasis added).

[23] *See* 8 U.S.C. § 1183a(f) (defining "sponsor"); *id.* § 1183a(h) (defining "federal poverty line").

[24] This case is therefore unlike *Empire Healthchoice Assurance, Inc. v. McVeigh*, which distinguished *Jackson Transit* because the relevant statute's "text itself contain[ed] no provision addressing" the contractual right at issue. *See* 547 U.S. 677, 697 (2006).

[25] *See supra* note 7.

Bailey, 115 F.3d 1222, 1231 (5th Cir. 1997). Because this case "arises under this Court's federal question jurisdiction, the domestic relations exception presents no bar." *See id.*

C. *Younger* Abstention

Although a federal court ordinarily must hear and decide all cases over which it has jurisdiction, there's an exception to that general rule. *See, e.g.*, *Daves v. Dallas County*, 22 F.4th 522, 547 (5th Cir. 2022) (en banc). Subject to various conditions and exceptions discussed below, federal courts must abstain from hearing a case under the "*Younger* doctrine"[26] if exercising jurisdiction would "interfer[e] with states' enforcement of their laws and judicial functions."[27] *Tex. Ent. Ass'n v. Hegar*, 10 F.4th 495, 508 (5th Cir. 2021).

Defendant asserts that allowing Plaintiff to enforce the Affidavit of Support in federal court "would interfere with the ongoing state court [divorce] proceedings." Resp. at 4. Defendant therefore insists that the Court must abstain from hearing this case under *Younger*. *Id.*

Courts have disagreed over whether *Younger* mandates abstention when a plaintiff files a federal lawsuit to enforce an affidavit of support while state court divorce proceedings are pending.[28] As far as this Court is aware, the Fifth Circuit has not yet taken a position on that issue.

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[26] *See Younger v. Harris*, 401 U.S. 37 (1971).

[27] At least in the Fifth Circuit, *Younger* only applies to claims for injunctive or declaratory relief, *see, e.g.*, *Google, Inc. v. Hood*, 822 F.3d 212, 222 (5th Cir. 2016); it does not apply to claims for monetary damages, *see, e.g.*, *Rowley v. Wilson*, 200 F. App'x 274, 275 (5th Cir. 2006). Because the Court concludes below that *Younger* abstention is categorically unavailable here, *see infra* Section II.C.2–3, the Court need not determine whether the remedies Plaintiff requests are best classified as monetary damages, injunctive relief, or a mixture of both.

[28] For cases abstaining, see, e.g., *Wigley v. Wigley*, No. 7:17CV00425, 2018 WL 1161138, at *2–3 (W.D. Va. Mar. 5, 2018) [hereinafter *Wigley I*]; *Kawai v. UaCearnaigh*, 249 F. Supp. 3d 821, 824–26 (D.S.C. 2017).

For cases declining to abstain, see, e.g., *Mao*, 2022 WL 17546712, at *4; *Belevich v. Thomas*, No. 2:17-cv-01193, 2018 WL 1244493, at *3–6 (N.D. Ala. Mar. 9, 2018); *Montgomery v. Montgomery*, 764 F. Supp. 2d 328, 333–35 (D.N.H. 2011); *Al-Aromah v. Tomaszewicz*, No. 7:19-cv-294, 2019 WL

For the following reasons, this Court sides with those declining to abstain, which appears to be the majority view.[29]

1. Applicable Legal Standards

"[E]ven in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81–82 (2013). Thus, the mere fact that "a pending state-court proceeding involves the same subject matter" as a federal suit does not alone warrant abstention. *Id.* at 72. The Supreme Court held in *Sprint Communications, Inc. v. Jacobs* that a federal court should not abstain under *Younger* unless the parallel state court litigation is one of the following three types of cases:

(1) a criminal prosecution;

(2) a civil enforcement proceeding akin to a criminal prosecution; or

(3) a "civil proceeding[] involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions."

Id. at 78 (cleaned up); *see also id.* ("We have not applied *Younger* outside these three 'exceptional' categories, and today hold . . . that they define *Younger*'s scope.").

If—and *only* if—the state proceedings fit into one of those three categories, the Court must then consider whether the state case also satisfies the so-called "*Middlesex*[30] conditions."[31] Under *Middlesex*, *Younger* abstention is warranted only if there is

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4306970, at *6–7 (W.D. Va. Sept. 11, 2019); *Pachal v. Bugreeff*, 495 F. Supp. 3d 963, 965–66 (D. Mont. 2020).

[29] *See supra* note 28.

[30] *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982).

[31] *Google*, 822 F.3d at 222–23; *see also, e.g.*, *Malhan v. Sec. U.S. Dep't of State*, 938 F.3d 453, 462 (3d Cir. 2019) ("*Younger* applies to only three exceptional categories of proceedings . . . Only after a court finds that a proceeding fits one of those descriptions should it consider *Middlesex*'s additional factors." (cleaned up)); *375 Slane Chapel Rd., LLC v. Stone County*, 53 F.4th 1122, 1126–27 (8th Cir. 2022) (similar); *Doe v. Univ. of Ky.*, 860 F.3d 365, 369 (6th Cir. 2017) (similar).

(1) an ongoing state judicial proceeding that

(2) implicates important state interests and

(3) provides an adequate opportunity to raise federal challenges.

Google, 822 F.3d at 222.[32]

2. The Parties' Divorce Proceedings Do Not Fall Within Any of the Three *Sprint* Categories

The Court first evaluates whether the parties' state court divorce proceedings fit within one of the three categories identified in *Sprint*. Obviously, the parties' divorce isn't a criminal prosecution, so it doesn't fall under the first category.[33] Nor is it a "civil enforcement proceeding;" that category only covers "state proceedings *akin to a criminal prosecution*,"[34] and divorce proceedings don't fit that definition.[35] Thus, the only way *Younger* could apply here is if the parties' divorce proceedings fit within *Sprint*'s third category: "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *See Sprint*, 571 U.S. at 78 (cleaned up).

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[32] Under certain circumstances, it is inappropriate to abstain under *Younger* even when the parallel state court proceeding falls into one of the three *Sprint* categories and satisfies the *Middlesex* conditions. *See, e.g.*, *Aaron v. O'Connor*, 914 F.3d 1010, 1019 (6th Cir. 2019); *Air Evac EMS, Inc. v. McVey*, 37 F.4th 89, 96 (4th Cir. 2022); *375 Slane*, 53 F.4th at 1127. Because, for the reasons discussed below, this case *doesn't* fall into any of those three categories, *see infra* Section II.C.2, the Court won't discuss those exceptions.

[33] *See, e.g.*, *Malhan*, 938 F.3d at 462–63; *Belevich*, 2018 WL 1244493, at *4 n.3.

[34] *Sprint*, 571 U.S. at 79 (2013) (cleaned up) (emphasis added); *see also id.* at 79–80 ("Such enforcement actions are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act. In cases of this genre, a state actor is routinely a party to the state proceeding and often initiates the action. Investigations are commonly involved, often culminating in the filing of a formal complaint or charges." (internal citations omitted)).

[35] *See, e.g.*, *Malhan*, 938 F.3d at 463 (concluding that divorce proceedings were not "akin to a criminal prosecution" because the appellant's "wife, not the State, began the family court case" and "[t]he case ha[d] not sought to sanction [the appellant] for wrongdoing, enforce a parallel criminal statute, or impose a quasi-criminal investigation;" "[r]ather, it ha[d] sought only to distribute assets equitably in the interests of [the appellant]'s children and putative ex-wife"); *Belevich*, 2018 WL 1244493, at *4 n.3 (reaching similar conclusion).

a. Courts Disagree Regarding Whether and When State Court Cases Involving Domestic Relations Fit Within *Younger*'s Third Category

"[C]ourts have split over the question of whether" a pending state action that "involves domestic relations," such as a divorce, falls under *Younger*'s third category. *Argen v. Kessler*, No. 18-963, 2018 WL 4676046, at *8 (D.N.J. Sept. 28, 2018).[36] As far as the Court is aware, the Fifth Circuit hasn't yet taken a side on that question in a published, binding opinion.[37]

Furthermore, to the best of the Court's knowledge, none of the courts that have analyzed that issue in the specific context of an action to enforce an affidavit of support has taken a firm position. For example, in *Belevich v. Thomas*, the parties mutually assumed that their divorce proceedings fit within *Younger*'s third category. 2018 WL 1244493, at *4 n.3. The district court, however, was "not entirely convinced." *Id.* Although the *Belevich* court did not deny that "states traditionally have a strong interest in divorce and custody proceedings," it noted that "proceedings falling into [*Younger*'s third] category mostly deal with the ability of a state court to enforce particular orders or with alterations in the procedural mechanisms the state court has developed to resolve disputes." *Id.* The parties' divorce proceedings, the court reasoned, didn't clearly fit that definition. *See id.* Ultimately, however, the *Belevich* court didn't "conclusively resolve th[at] quandary because, even assuming that [the] divorce proceeding" fit within *Younger*'s third category, abstention was unwarranted for other reasons. *Id.*

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[36] *Compare, e.g.*, *NextGear Cap., Inc. v. Gutierrez*, No. 3:18-1617, 2019 WL 1896563, at *8 (M.D. Pa. Apr. 29, 2019) (holding categorically that a "divorce proceeding . . . is not . . . a state civil proceeding involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions" (cleaned up)), *with, e.g.*, *Climate Change Truth, Inc. v. Bailey*, No. 3:22-cv-654, 2022 WL 1422078, at *5 (D. Or. May 5, 2022) ("The underlying divorce proceeding in state court that Plaintiff wishes to enjoin is a state civil proceeding involving orders that are uniquely in furtherance of the state courts' ability to perform its [sic] judicial functions. There is perhaps no state administrative scheme in which federal court intrusions are less appropriate than domestic relations law." (cleaned up)).

[37] As the Court discusses below, however, the Fifth Circuit has issued a *non-binding, unpublished* opinion bearing on that question. *See infra* Section II.C.2.d.

Likewise, in *Wigley v. Wigley*, the court invoked *Younger* to abstain from hearing the plaintiff's action to enforce an affidavit of support while the parties' divorce proceedings were pending. *Wigley I*, 2018 WL 1161138, at *1–3 (W.D. Va. Mar. 5, 2018). The *Wigley* court's abstention order didn't consider whether the state court proceedings fell within any of the three *Younger* categories. *See id.*

When faced with a motion to reconsider its decision, the *Wigley* court acknowledged in a footnote that, under *Sprint*, "*Younger* abstention applies only when the pending state action falls into one of [the] three exceptional categories" listed above. *Wigley v. Wigley*, No. 7:17CV00425, 2018 WL 2172507, at *1 & n.2 (W.D. Va. May 10, 2018) [hereinafter *Wigley II*]. The court commented that, "[s]ince *Sprint*, district courts have reached unclear or conflicting conclusions over whether to apply *Younger* when the pending state action involves domestic relations." *Id.* at *1 n.2. Ultimately, however, the court didn't decide whether the parties' ongoing divorce fit into the third (or any other) *Younger* category because neither party raised that issue in his or her briefing on the reconsideration motion. *Id.* Thus, "[i]n light of the[] conflicting rulings" regarding *Younger*'s applicability to parallel family court proceedings, the court concluded that the plaintiff had failed to identify "a clear legal error" that would "entitle [her] to relief under" the rules governing reconsideration. *Id.* at *1 & n.2.

b. The Parties' Divorce Proceedings Don't Implicate a State Court's Interest in Enforcing its Orders and Judgments

The Court concludes that—at least on the facts of this case—the parties' ongoing divorce proceedings do not involve "orders uniquely in furtherance of the state courts' ability to perform their judicial functions" under *Younger*'s third category. *See Sprint*, 571 U.S. at 78 (cleaned up).

The federal appellate courts have generally agreed that the mere fact that a state case "involves a quintessentially state-law matter" (like family law) does not alone place it within

Younger's third category.[38] Instead, "*Younger*'s third category of cases is reserved for civil proceedings implicating a state's interest in *enforcing* the orders and judgments of its courts,"[39] such as cases involving "civil contempt orders" or "state rules for posting bond pending appeal."[40]

The parties' divorce proceedings don't fit that definition. *See, e.g.*, *Edelglass v. New Jersey*, No. 14-760, 2015 WL 225810, at *10–11 (D.N.J. Jan. 16, 2015), *aff'd sub nom.*, *Allen v. DeBello*, 861 F.3d 433 (3d Cir. 2017) (holding that the parties' "ongoing child custody and divorce proceedings" did "not fall into the category of proceedings which further the state's ability to perform judicial functions" because they were "not analogous to contempt hearings"). As far as the Court is aware, those proceedings don't currently involve or implicate the *enforcement* of any orders or judgments, as the state court has not yet entered a divorce decree or any other order that either party is attempting to enforce in state judicial proceedings. *See* Divorce Case Docket. Nor does it appear that the divorce court has instituted proceedings to hold either party in contempt. *See id.* Nor does it appear that state rules for posting a bond pending appeal currently have any relevance to the divorce case. *See id.*

c. The Relief Plaintiff Seeks Counsels Against Abstention

The nature of the relief Plaintiff seeks takes this case even further outside the bounds of *Younger*'s third category. Many of the cases holding that a parallel divorce action implicates

[38] *375 Slane*, 53 F.4th at 1129; *see also, e.g.*, *Cook v. Harding*, 879 F.3d 1035, 1040 (9th Cir. 2018) ("[F]ederal courts cannot ignore *Sprint*'s strict limitations on *Younger* abstention simply because states have an undeniable interest in family law."); *Malhan*, 938 F.3d at 463–65 (concluding that certain state family court proceedings didn't fall within the third *Younger* category).

[39] *Courthouse News Serv. v. N.M. Admin. Off. Cts.*, 53 F.4th 1245, 1256 (10th Cir. 2022) (cleaned up) (emphasis added).

[40] *FCA US, LLC v. Spitzer Autoworld Akron, LLC*, 887 F.3d 278, 290 (6th Cir. 2018); *see also, e.g.*, *Cavanaugh v. Geballe*, 28 F.4th 428, 433 (2d Cir. 2022) ("In *Sprint*, the Supreme Court identified two types of orders that clearly fall within [*Younger*'s third] category: civil contempt orders and orders requiring the posting of bonds pending appeal.").

orders uniquely in furtherance of the state courts' ability to perform judicial functions involved attempts to *collaterally attack* the state court's orders, processes, or authority, such as

(1) requests that a federal court invalidate or modify a state divorce court's rulings;[41]

(2) requests that a federal court order the state court judge presiding over the divorce to recuse himself or herself;[42] or

(3) other challenges to the way state divorce courts conduct their business.[43]

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[41] *See Charnock v. Virginia*, No. 2:16cv493, 2017 WL 5574987, at *3 (E.D. Va. Jan. 5, 2017), *aff'd*, 698 F. App'x 158 (4th Cir. 2017) ("The claims asserted by Plaintiff in his Amended Complaint, which challenge various rulings and decisions made in these divorce proceedings, thus implicate the State's interest in enforcing the orders and judgments of its courts . . . Thus, Defendants are entitled to dismissal of this action based upon the *Younger* abstention doctrine alone." (cleaned up)); *Stark v. City of Memphis*, No. 19-2396, 2020 WL 8770177, at *5 (W.D. Tenn. Feb. 18, 2020), *report and recommendation adopted by* 2021 WL 597880 (W.D. Tenn. Feb. 16, 2021) ("The pending divorce action raises more serious *Younger* concerns. Divorce proceedings are civil proceedings that may involve orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions. Ms. Stark seeks to enjoin the enforcement of a state court order. This fits the third [*Younger*] category." (internal citations omitted)); *Lawn Mgrs., Inc. v. Progressive Lawn Mgrs., Inc.*, No. 4:16 CV 144, 2017 WL 76898, at *3–4 (E.D. Mo. Jan. 9, 2017), *vacated on reconsideration*, 2017 WL 11664101 (E.D. Mo. Mar. 10, 2017) (abstaining from federal action to "modif[y] . . . a state court's order dividing marital property;" reasoning that "a domestic relations decree is of a kind uniquely in furtherance of the state courts' ability to perform their judicial functions" (cleaned up)).

[42] *See Perso v. Perso*, No. 19-CV-2858, 2019 WL 4415399, at *3 (E.D.N.Y. Sept. 13, 2019) ("Insofar as plaintiff seeks . . . that Judge Morris recuse himself from this case, such injunctive relief . . . would cause this Court to intervene in plaintiff's ongoing state court divorce and child support proceedings . . . Accordingly, this Court abstains under *Younger* from interfering in plaintiff's ongoing state-court proceedings involving child custody and visitation issues and implicating a State's interest in enforcing the orders and judgments of its courts." (cleaned up)); *Rosberg v. Rosberg*, No. 8:21CV152, 2021 WL 2210602, at *1–3 (D. Neb. June 1, 2021).

[43] *See Falco v. Justices of the Matrim. Parts of the Sup. Ct. of Suffolk Cnty.*, 805 F.3d 425, 427–28 (2d Cir. 2015) ("During the course of the divorce proceedings, Falco commenced an action in federal court under 42 U.S.C. § 1983 challenging the constitutionality of the New York laws that authorize State judges to order parents to pay for attorneys appointed for their children . . . . Falco's federal lawsuit implicates the way that New York courts manage their own divorce and custody proceedings—a subject in which the states have an especially strong interest . . . . [O]rders relating to the selection and compensation of court-appointed counsel for children are integral to the State court's ability to perform its judicial function in divorce and custody proceedings. The circumstances of this case therefore clearly fall within *Sprint*'s third category: pending State civil proceedings involving orders uniquely in furtherance of the state courts' ability to perform their judicial functions." (cleaned up)).

Federal intervention in such matters would clearly offend the "notion of comity" and the "proper respect for state functions" that *Younger* exists to preserve. *See Google*, 822 F.3d at 222 (quoting *Younger*, 401 U.S. at 44).

Here, by contrast, Plaintiff is not asking a federal court to "interfer[e] with core state court civil administrative *processes, powers, and functions* that allow state courts to adjudicate the matters before them."[44] For instance, Plaintiff is not asking this Court to second-guess the divorce court's judicial decisions, dictate how that court should conduct its proceedings, or disqualify any state court judges from presiding over her divorce.[45] Moreover, Plaintiff expressly disclaims any intention to attempt to enforce the Affidavit of Support in the state court divorce proceedings.[46] Instead, Plaintiff is merely trying to vindicate a right she enjoys under federal law in a federal forum. Exercising jurisdiction here thus poses no threat to any "orders uniquely in furtherance of the state courts' ability to perform their judicial functions," and this case doesn't fall under *Younger*'s third category. *See Sprint*, 571 U.S. at 78 (cleaned up).

d. The Fifth Circuit's Non-Binding Opinion in *Bowling* Doesn't Mandate the Contrary Conclusion

The Fifth Circuit's opinion in *Bowling v. Roach*, 816 F. App'x 901, 904 (5th Cir. 2020)—in which the court implicitly concluded that the plaintiff's ongoing divorce proceedings fell into

[44] *See Cavanaugh*, 28 F.4th at 434 (emphasis added); *see also, e.g.*, *Belevich*, 2018 WL 1244493, at *4 n.3 (observing that "proceedings falling into [*Younger*'s third] category mostly deal with the ability of a state court to *enforce particular orders* or with *alterations in the procedural mechanisms the state court has developed* to resolve disputes." (emphasis added)).

[45] *See Belevich*, 2018 WL 1244493, at *5 (declining to abstain from federal action to enforce affidavit of support because "it would not require th[e] court to serve as a 'grand overseer' of the underlying state court divorce proceedings"); *Montgomery*, 764 F. Supp. 2d at 333–34 (declining to abstain from affidavit of support enforcement action where plaintiffs did "not seek an injunction against the Family Court proceedings" or "to overturn the Family Court's" orders (cleaned up)).

[46] *See, e.g.*, Br. at 15 ("Ms. Nevarez has not asked the El Paso family court to enforce the Affidavit of Support, nor sought any relief predicated on its existence."); Resp. at 3 (agreeing that Plaintiff "has not asked for any support in the state divorce proceeding"); *see also Mao*, 2022 WL 17546712, at *4 (declining to abstain when plaintiff had "not raised the issue of the [a]ffidavit of [s]upport in the divorce proceedings and d[id] not intend to do so").

Younger's third category—is not to the contrary. As an unpublished opinion, *Bowling* does not bind this Court. *See* 5TH CIR. L.R. 47.5.4 (providing, with exceptions not relevant here, that "[u]npublished opinions issued on or after January 1, 1996, are not precedent"). Nevertheless, this Court generally follows unpublished Fifth Circuit decisions because they indicate how the Fifth Circuit might rule in a future, precedential opinion. *Cf., e.g.*, *Test Masters Educ. Servs., Inc. v. State Farm Lloyds*, 791 F.3d 561, 567 (5th Cir. 2015) (following an unpublished Fifth Circuit opinion as "persuasive authority" while acknowledging that the unpublished case was "not binding circuit precedent").

The plaintiff in *Bowling* filed for divorce in state court. *Bowling v. Roach*, No. 4:19-CV-144, 2019 WL 7559787, at *1 (E.D. Tex. Aug. 8, 2019), *report and recommendation adopted by* 2019 WL 5703913 (E.D. Tex. Nov. 5, 2019), *aff'd*, 816 F. App'x 901 (5th Cir. 2020). She then filed a *pro se* federal lawsuit against the state court judge presiding over her divorce decree enforcement proceedings, alleging "a wide-ranging conspiracy among multiple judges to deprive her of notice, due process, and property in the course of enforcing her divorce decree." 816 F. App'x at 902. Among other relief, the plaintiff asked the federal district court "to vacate all orders" the state court judge issued "and permanently recuse" him from presiding over the state court proceedings. 2019 WL 7559787, at *2.

Invoking *Younger*, the Fifth Circuit abstained from deciding the plaintiff's individual-capacity claims for injunctive relief.[47] 816 F. App'x at 904–05. The panel did not explicitly analyze which of the three *Younger* categories the pending divorce proceedings fell into. *See id.* at 904. It appears, however, that the Fifth Circuit implicitly concluded that the divorce decree enforcement proceedings were "pending civil proceedings involving certain orders uniquely in

[47] The Fifth Circuit also ruled that the Eleventh Amendment barred plaintiff's claims against the judge in his official capacity, and that judicial immunity barred her claims for damages. 816 F. App'x at 903–04, 905–06.

furtherance of the state court's ability to perform [its] judicial functions" and thus fit under *Younger*'s third category. *See id.* (cleaned up).

The fact that the pending divorce decree enforcement proceedings in *Bowling* fell under *Younger*'s third category doesn't compel the same conclusion here. To reiterate, "*Younger*'s third category of cases is reserved for civil proceedings implicating a state's interest in *enforcing* the orders and judgments of its courts." *Courthouse News*, 53 F.4th at 1256 (cleaned up) (emphasis added). In *Bowling*, "the litigation related to the underlying divorce proceedings ha[d] concluded," but the state court case had "been re-opened for the enforcement of the divorce decree." 2019 WL 7559787, at *5. Thus, the plaintiff in *Bowling* was "challenging the orders entered by" the defendant judge "regarding *enforcement* of the divorce decree." *Id.* (emphasis added). Because the plaintiff in *Bowling* was asking a federal court to oversee a state court's attempt to enforce its own orders, the ongoing state court proceedings there clearly involved "orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *See Sprint*, 571 U.S. at 78 (cleaned up).

Here, by contrast, the parties' divorce proceedings are still pending, and there's no divorce decree for the state court to enforce yet. *See* Divorce Case Docket. Because Plaintiff isn't asking this Court to interfere with a state court proceeding to *enforce* a particular state court order, the divorce case falls outside *Younger*'s third category.[48]

Also, as noted, many of the cases finding that a pending family court proceeding fell into *Younger*'s third category involved attempts to collaterally attack the family court's rulings or disqualify the presiding state court judge.[49] The state court proceedings in *Bowling* fell comfortably within that category because the plaintiff was asking a federal court "to vacate all

[48] *See supra* notes 39 & 44 and accompanying text.

[49] *See supra* notes 41–42 and accompanying text.

orders" the state court judge had issued "and permanently recuse" him from the case. 2019 WL 7559787, at *2. Plaintiff isn't asking this Court to do anything of the sort. Instead, she's merely trying to vindicate a federal right that, as far as the Court is aware, she hasn't litigated in state court (and doesn't intend to). Thus, *Bowling* is distinguishable.

e. The Fact that Texas is a Community Property State is Irrelevant

Defendant observes that many of the cases considering whether to abstain from a federal affidavit of support enforcement action while state court divorce proceedings were pending arose in non-community property states.[50] Resp. at 5. Texas, by contrast, is a community property state. *See, e.g.*, *Smith v. Lanier*, 998 S.W.2d 324, 328, 331 (Tex. App. 1999). Defendant therefore maintains that the Texas court presiding over the parties' divorce "must deal with support issues as well as the proper distribution of the marital estate," which includes the Affidavit of Support.[51] Resp. at 5. Because "Plaintiff can seek to enforce the contractual matters created by the I-864 Affidavit that are part of the marital estate in the State Court proceeding," Defendant insists that this Court must abstain from this case to avoid encroaching upon the state divorce court's domain. *See id.* at 5–6.

The Court disagrees. As far as the Court's research reveals, none of the cases considering whether to abstain from an affidavit of support enforcement action suggest that the answer turns in any way on whether the divorce occurred in a community property state.[52] In

[50] A "community-property state" is one "in which spouses hold property that is acquired during marriage (other than property acquired by one spouse by inheritance, devise, or gift) as community property." *Community-Property State*, BLACK'S LAW DICTIONARY (11th ed. 2019). "[E]ach spouse generally hold[s] a one-half interest in" community property. *Community Property*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[51] The Court assumes without deciding that Defendant's characterization of Texas divorce and property law is correct.

[52] *See Pachal*, 495 F. Supp. 3d at 965–66; *Mao*, 2022 WL 17546712, at *4; *Belevich*, 2018 WL 1244493, at *3–6; *Montgomery*, 764 F. Supp. 2d at 333–35; *Pavlenco v. Pearsall*, No. 13-cv-1953, 2013

any event, the possibility that the state divorce court might also decide issues relating to the Affidavit of Support does not require the Court to abstain.[53] To reiterate, the mere fact that "a pending state-court proceeding involves the same subject matter" as a federal suit does not alone warrant abstention. *Sprint*, 571 U.S. at 72. "*Younger* abstention does not prevent a federal court from exercising its jurisdiction simply because its decision might contradict a state court decision." *Cavanaugh*, 28 F.4th at 434. Because, for the reasons discussed above, Plaintiff is not asking this Court to dictate how the state divorce court may conduct its proceedings or enforce its orders, this case does not fall under *Younger*'s third category.

In sum, because "this case does not fall into one of the three limited categories of cases listed in *Sprint*," "*Younger* abstention cannot apply." *See, e.g.*, *Tollefsrud v. Solum*, No. 13-2201, 2014 WL 37576, at *1 (D. Minn. Jan. 3, 2014).

3. Because the Pending Divorce Proceedings Don't Fall Within Any of the Three *Sprint* Categories, the *Middlesex* Conditions Are Irrelevant

Rather than focusing on the antecedent question of whether their divorce proceedings fall into one of the three *Sprint* categories, the parties spent most of their briefs analyzing whether the *Middlesex* conditions favor abstention. *See* Br. at 7, 9–14; Resp. at 4–5; Reply at 1. Because this case doesn't fall into any of those three categories, however, the *Middlesex* conditions are

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WL 6198299, at *2–3 (E.D.N.Y. Nov. 27, 2013); *Al-Aromah*, 2019 WL 4306970, at *6–7; *Kawai*, 249 F. Supp. 3d at 824-26; *Wigley I*, 2018 WL 1161138, at *2–3; *Wigley II*, 2018 WL 2172507, at *1–2.

[53] *See, e.g.*, *Montgomery*, 764 F. Supp. 2d at 334 ("[A]ny chance that this court and the Family Court might come to different conclusions about the enforceability of the affidavit of support, or the amount it obligates [the defendant] to pay, does not itself warrant abstention under the *Younger* doctrine."); *Belevich*, 2018 WL 1244493, at *5 ("At most, enforcement of the I-864 Affidavit of Support obligations could partially duplicate or otherwise influence the state court's ultimate division of marital property in the underlying divorce proceeding. However, it is well settled that a federal proceeding may affect, or for practical purposes pre-empt, a future—or, as in the present circumstances, even a pending—state-court action without triggering *Younger*. Put another way, the mere possibility of inconsistent results between parallel and federal state litigation is insufficient to justify *Younger* abstention. Thus, even if the Defendants are correct that the enforceability of the I-864 Affidavit of Support is part and parcel of the issues before the state court, that argument, standing alone, is still insufficient to justify abstention." (cleaned up)).

irrelevant; the Court can't abstain under *Younger* no matter which party those factors favor. *See, e.g.*, *Reprod. Health Servs. v. Strange*, 204 F. Supp. 3d 1300, 1327 (M.D. Ala. 2016) ("Unless the state court proceedings at issue are within the three types of cases identified in [*Sprint*], the three *Middlesex* . . . factors . . . are irrelevant.").

The Court thus declines to follow *Kawai v. UaCearnaigh* and *Wigley v. Wigley*, in which the courts based their decisions to abstain from a federal affidavit of support enforcement action exclusively on the *Middlesex* factors without first analyzing or determining whether the state court divorce proceedings fell within one of the three *Younger* categories.[54]

The Supreme Court has chided lower courts not to do that. In *Sprint*, the Eighth Circuit below "read *Middlesex* to say" that whenever the three *Middlesex* conditions are satisfied, "*Younger* abstention [i]s warranted." *Sprint*, 571 U.S. at 81. The Supreme Court rejected the Eighth Circuit's interpretation as "irreconcilable with [the Court's] dominant instruction that, even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule." *Id.* at 81–82. Abstaining from every case that satisfied the three *Middlesex* factors, the *Sprint* Court opined, would impermissibly "extend *Younger* to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest." *Id.* at 81.

Instead, the *Sprint* court explained, "[t]he three *Middlesex* conditions" are "not *dispositive*" of whether to abstain under *Younger*; they are merely "*additional* factors" a court may consider "before invoking *Younger*." *Id.* (first emphasis added). Before applying *Middlesex*, the Supreme Court clarified, a federal court must first determine whether the case involves one of the "three types of proceedings" that "define *Younger*'s scope." *Id.* at 78.

[54] *See Kawai*, 249 F. Supp. 3d at 823–26; *Wigley I*, 2018 WL 1161138, at *1–3 & n.2; *see also Wigley II*, 2018 WL 2172507, at *1–2 & n.2 (acknowledging *Sprint* but declining to reconsider its abstention ruling).

Following *Sprint*, the federal appellate courts have recognized that "the three *Middlesex* conditions are no longer the test for *Younger* abstention."[55] "Only *after* a court finds that a proceeding" falls within one of the three categories identified in *Sprint* "should it consider *Middlesex*'s additional factors."[56] Because the courts in both *Kawai* and *Wigley* based their decisions to abstain solely on the *Middlesex* conditions without first determining that the ongoing divorce proceedings fell into one of the three *Sprint* categories,[57] they are inconsistent with binding Supreme Court precedent, and the Court will not follow them.

D. *Colorado River* Abstention

Younger is just one of several doctrines that may require a federal court to abstain from hearing a case. Another such doctrine is "*Colorado River* abstention,"[58] under which a federal court "may choose to abstain" from a case while it "await[s] the conclusion of state-court proceedings in a parallel case, based on principles of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Aptim Corp. v. McCall*, 888 F.3d 129, 135 (5th Cir. 2018) (cleaned up). When assessing whether to abstain under *Colorado River*, courts consider the six factors set forth in the margin.[59]

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[55] *Malhan*, 938 F.3d at 462 (cleaned up). See also the cases cited *supra* note 31.

[56] *Malhan*, 938 F.3d at 462 (cleaned up) (emphasis added). See also the cases cited *supra* note 31.

[57] *See supra* note 54.

[58] *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

[59] *See Aptim*, 888 F.3d at 135–36 ("(1) [A]ssumption by either court of jurisdiction over a res, (2) relative inconvenience of the forums, (3) avoidance of piecemeal litigation, (4) the order in which jurisdiction was obtained by the concurrent forums, (5) to what extent federal law provides the rules of decision on the merits, and (6) the adequacy of the state proceedings in protecting the rights of the party invoking federal jurisdiction." (quoting *Stewart v. W. Heritage Ins. Co.*, 438 F.3d 488, 491 (5th Cir. 2006))).

Courts have disagreed over whether *Colorado River* counsels in favor of abstaining from hearing a federal lawsuit to enforce an affidavit of support while state court divorce proceedings are pending.[60]

The Court need not take a position on that split. Most courts that have considered the issue have concluded that *Colorado River* abstention is non-jurisdictional, and that a litigant may therefore waive *Colorado River* abstention by failing to brief it.[61] Even though Plaintiff briefed *Colorado River*'s potential applicability in her opening brief, *see* Br. at 15–18, Defendant didn't ask the Court to abstain under *Colorado River* in his response; he instead restricted his abstention arguments to the *Younger* doctrine, *see* Resp. at 4–5. Accordingly, the Court won't consider whether that doctrine warrants abstention here.

E. *Rooker-Feldman*

Several courts have also considered whether and when the "*Rooker-Feldman* doctrine"—which "holds that inferior federal courts do not have the power to modify or reverse state court judgments except when authorized by Congress," *e.g.*, *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 384 (5th Cir. 2022) (cleaned up)—may bar a plaintiff's action to enforce an affidavit of support against a former spouse.[62] "The *Rooker-Feldman* doctrine is jurisdictional," *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 381 (5th Cir. 2013), so the Court

[60] *Compare Montgomery*, 764 F. Supp. 2d at 338 (declining to abstain under *Colorado River*), *and Pachal*, 495 F. Supp. 3d at 966–68 (same), *with Pavlenco*, 2013 WL 6198299, at *3 (invoking *Colorado River* doctrine to stay federal affidavit of support enforcement proceedings for six months).

[61] *See, e.g.*, *Lamex Foods, Inc. v. Audeliz Lebron Corp.*, 646 F.3d 100, 112 n.15 (1st Cir. 2011) ("*Colorado River* abstention . . . is a waivable defense." (cleaned up); *Allian v. Allian*, No. 18 C 3825, 2018 WL 6591422, at *4 (N.D. Ill. Dec. 14, 2018) ("*Colorado River* abstention is prudential, not jurisdictional . . . [A] party may waive *Colorado River* abstention . . . ." (cleaned up)); *Stuart v. Ryan*, 818 F. App'x 858, 861 (11th Cir. 2020) ("*Colorado River* abstention is not jurisdictional."). *But see Cassino v. JP Morgan Chase Bank Nat'l Ass'n*, No. 20-cv-03228, 2021 WL 4398603, at *2 (D. Colo. Sept. 27, 2021), *aff'd*, No. 22-1049, 2022 WL 3012270 (10th Cir. 2022) (concluding that *Colorado River* abstention is jurisdictional and therefore non-waivable).

[62] *See, e.g.*, *Iannuzzelli*, 2009 WL 10667091, at *3–6; *Bisello v. Chase*, No. 1:19-CV-265, 2019 WL 13268168, at *4–6 (N.D. Ga. Jan. 31, 2019).

must determine whether it applies even though Defendant doesn't argue that it does, *see generally* Resp.

Rooker-Feldman "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." *E.g.*, *Uptown Grill*, 46 F.4th at 384 (cleaned up). Plaintiff isn't asking the Court to do that; again, the state court hasn't yet issued a judgment for her to collaterally attack. *See* Br. at 19–20; Divorce Case Docket. Thus, *Rooker-Feldman* doesn't deprive the Court of jurisdiction here.

F. The Tenth Amendment

Finally, Defendant argues that because "matters of [domestic] support . . . are traditionally in the realm of the States," letting Plaintiff enforce the Affidavit of Support in federal court "would render [8 U.S.C. § 1183a] unconstitutional in violation of the Tenth Amendment" to the U.S. Constitution. Resp. at 2, 4–6.

The Tenth Amendment specifies that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." U.S. CONST. amend. X. As the Fifth Circuit's opinion in *United States v. Bailey* demonstrates, however, the mere fact that a federal statute implicates domestic support issues doesn't necessarily mean it violates the Tenth Amendment. *See* 115 F.3d at 1232–33.

The defendant in *Bailey* challenged the constitutionality of the Child Support Recovery Act ("CSRA"), "which ma[de] it a federal crime to willfully fail to pay a past due support obligation with respect to a child who resides in another state." *Id.* at 1224 (cleaned up). He argued that the CSRA "contravene[d] the Tenth Amendment" because it "trample[d] upon the state's sovereign right to legislate in matters of family law." *Id.* at 1232.

The Fifth Circuit disagreed. *Id.* at 1224. It explained that "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." *Id.* (quoting *New York v. United States*, 505 U.S. 144, 156 (1992)); *see also* U.S. CONST. amend. X ("The powers *not delegated to the United States by the Constitution* . . . are reserved to the States . . . ." (emphasis added)). Because Congress "acted pursuant to its delegated powers under the Commerce Clause" when it enacted the CSRA, it did not violate the Tenth Amendment by "usurp[ing] the state's police powers to regulate purely intrastate matters of family . . . law." 115 F.3d at 1233. Nor did the CSRA impermissibly "attempt to regulate states as states" in contravention of the Tenth Amendment, as the statute "regulate[d] purely private conduct." *Id.*

Here too, Congress enacted 8 U.S.C. § 1183a pursuant to one of its enumerated powers under the Constitution—namely, its power "[t]o establish an uniform Rule of Naturalization." *See* U.S. CONST. art. I, § 8, cl. 4.[63] Because the Constitution vests the power to legislate immigration policy in the federal government and not the States,[64] Congress did not usurp a power that the Tenth Amendment reserves to the States by enacting 8 U.S.C. § 1183a and authorizing litigants to vindicate their statutory rights in federal court. Thus, the fact that 8 U.S.C. § 1183a may implicate domestic support issues doesn't render that statute unconstitutional. *See Bailey*, 115 F.3d at 1233.

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[63] *See also, e.g.*, *Velasquez-Rios v. Wilkinson*, 988 F.3d 1081, 1088–89 (9th Cir. 2021) ("Congress possesses sweeping authority over immigration policy as an incident of sovereignty. This authority derives, in part, from the federal government's powers as enumerated in the Naturalization Clause, the Commerce Clause, the Migration and Importation Clause, as well as the federal government's inherent power as sovereign to control and conduct relations with foreign nations." (cleaned up)).

[64] *See, e.g.*, *Tennessee v. U.S. Dep't of State*, 329 F. Supp. 3d 597, 623 (W.D. Tenn. 2018), *aff'd*, 931 F.3d 499 (6th Cir. 2019) ("It is undisputed that the authority to control immigration is vested solely in the Federal government by the Naturalization Clause of Article I of the United States Constitution . . . . When the national government by statute has established rules and regulations touching the right, privileges, obligations, or burdens of aliens as such, no state can add to or take from its force and effect." (cleaned up)).

Moreover, like the CSRA, 8 U.S.C. § 1183a "regulates purely private conduct and makes no attempt to regulate states as states." *Id.* For instance, it does not "compel the States to enact or administer a federal . . . program." *See New York*, 505 U.S. at 188. Nor does it "command the States' officers, or those of their political subdivisions, to administer or enforce a federal . . . program." *See Printz v. United States*, 521 U.S. 898, 935 (1997). Nor does it "direct[] the States either to enact or to refrain from enacting a regulation of the conduct of activities occurring within their borders." *See Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). The Court therefore rejects Defendant's assertion that exercising federal jurisdiction over this case would violate the Tenth Amendment.

III. CONCLUSION

The Court may therefore exercise federal question jurisdiction over this case, and there is no basis to abstain from exercising that jurisdiction. This case will proceed in federal court accordingly.

So ORDERED and SIGNED this 24th day of March 2023.

DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE