FAMILY LAW—LIMITING APPROACH FOR INDIVIDUALS SEEKING RELIEF UNDER THE INTERNATIONAL CHILD ABDUCTION REMEDIES ACT—*DAWSON V. DYLLA*, NO. 21-1225, 2021 U.S. APP. LEXIS 33386 (10TH CIR. NOV. 10, 2021).

The International Child Abduction Remedies Act (ICARA) established procedures to implement the 1980 Hague Convention on Civil Aspects of International Child Abduction (The Hague Convention).[1] Circuit courts are split on whether ICARA

1. *See* International Child Abduction Remedies Act (ICARA), 22 U.S.C. § 9003 (2022) (establishing procedures for filing convention cases in U.S. courts). The ICARA establishes procedures for filing cases under the 1980 Hague Convention on Civil Aspects of International Child Abduction (The Hague Convention) in courts of the United States. *Id.* A petition must be filed in civil court where the court has subject matter jurisdiction. *Id. See also* Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89 [*hereinafter* The Hague Convention] (outlining final agreement for interests of children involved in crossing international borders). Article 1 of the Convention states:

> The objects of the present Convention are –
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> a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
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> b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Id. Article 3 notes what qualifies as wrongful retention or removal of a child as follows:

> The removal or the retention of a child is to be considered wrongful where –
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> a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
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> b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
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> The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Id. See also International Child Abduction, INT'L CENTRE FOR MISSING & EXPLOITED CHILDREN, (Aug. 3, 2023) (explaining Hague Convention). "The Hague Convention is a multilateral treaty that establishes proceedings for the prompt return of children who have been wrongfully removed or kept away from their home country." *Id. See also Laws and Regulations*, U.S. DEP'T OF STATE – BUREAU OF CONSULAR AFFAIRS, (Aug. 3, 2023) (describing Hauge Convention's purpose). "The Hague Convention on the Civil

authorizes federal courts to hear access claims that seek to secure the exercise of visitation rights previously awarded by a foreign court.[2] In *Dawson v. Dylla*,[3] the Tenth Circuit Court of Appeals declined to address the split authorities on the issue of jurisdiction over access claims under the ICARA.[4] The Court held that it was unnecessary to resolve the issue because the district court should

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Aspects of International Child Abduction is an international treaty that provides a legal framework for securing the prompt return of wrongfully removed or retained children to the country of their habitual residence where a court can decide custody issues." *Id.*

2. *See* ICARA, 22 U.S.C. § 9003 (illustrating intentions of United States after Hague Convention). This international agreement was made to safeguard intercountry adoptions. *Id. See also* Ozaltin v. Ozaltin, 708 F.3d 355, 372 (2d Cir. 2013) (holding federal court has jurisdiction to hear access claims). The *Ozaltin* court summarized that federal law creates a private right of action to enforce access rights protected under the Hague Convention on the Civil Aspects of International Child Abduction. *Id.* at 378. *See also* Cantor v. Cohen, 442 F.3d 196, 206 (4th Cir. 2006) (holding federal courts do not have jurisdiction to hear access cases). Conversely, the *Cantor* court held "[t]o hold otherwise would be contrary to Congress' declaration that ICARA is intended to 'empower courts in the United States to determine only rights under the Convention . . . .'" *Id.*

3. No. 21-1225, 2021 U.S. App. LEXIS 33386, at *1 (10th Cir. Nov. 10, 2021) (analyzing plaintiffs' ICARA claim).

4. *See id.* at *8 (determining whether ICARA applied). The plaintiff seeks to enforce his custody rights that were granted by a court in Manchester, England. *Id.* at *13. *See also* 17A Moore's Fed. Prac. - Civil § 120.22 (2023) (describing types of abstention doctrines that could be invoked). "The term 'abstention' generally is used to describe the judicial doctrines that the United States Supreme Court has articulated, as opposed to Congressional enactments that accomplish the same purpose in certain circumstances." *Id. But see Ozaltin*, 708 F.3d at 360 (examining ICARA while offering argument that differs from Fourth Circuit). The court notes the judicial remedies provided by the ICARA. *Id.* The court quotes the ICARA statute stating that:

> [a]ny person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action "in a state or federal court" in the place where the child is located at the time the petition is filed.

Id. The court analyzes the statutory basis for an individual to initiate federal action to enforce access rights under the Hague Convention, and it states that the statutory basis could "hardly be clearer." *Id.* at 372. The court also recognized the Fourth Circuit's analysis to reach a decision where an individual does not have a federal right of action to enforce access rights. *Id.* They note that the Fourth Circuit relied heavily on Article 21 of the Hauge Convention. *Id. See generally Cantor*, 442 F.3d at 199 (explaining court's reasoning to deny federal right of action to enforce access rights under Article 21). The court relied heavily on Article 21, which provides:

> An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child. The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of conditions to which the exercise of those rights may be subject. The Central

have abstained from exercising jurisdiction over this access claim altogether.[5]

Clive Dawson, a citizen of the United Kingdom, and Mariah Dylla, a citizen of the United States, were married in 2011 and soon after welcomed a daughter in 2013.[6] After the couple separated, a family court in Manchester, England ordered that it was in the child's best interest to live with Dylla in the United States, but allowed Dawson parenting time on at least three occasions per year.[7] Shortly after this decision, Dylla entered the Manches-

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> Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

Id. at 199-200.

5. *See Dawson*, 2021 U.S. App. LEXIS 33386 at *12-13 (declining to exercise jurisdiction over plaintiff's claims). "*Younger* abstention applies when '(1) there is an ongoing criminal, civil, or administrative proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests.'" *Id.* at *13. *See also* Younger v. Harris, 401 U.S. 37, 54 (1971) (laying out framework for federal courts to follow when abstaining from hearing claims). After being accused of violating the California Criminal Syndicalism Act in state criminal proceedings, the plaintiff filed a federal lawsuit to stop the prosecution. *Id.* at 39. The plaintiff argued that the state law in question was unconstitutionally vague and overbroad, violating the First and Fourteenth Amendments. *Id.* at 39-40. Although a federal three-judge court ruled in favor of the plaintiff, the Supreme Court overturned the decision. *Id.* at 40-54. Justice Black, speaking for the majority, expressed that the lower court should have abstained from hearing the federal claim for several reasons. *Id.* at 43-45. *See also* Weitzel v. Div. of Occupational & Prof'l Licensing of Dep't of Com., 240 F.3d 871, 874 (10th Cir. 2001) (applying *Younger* abstention). After the appellant's license to practice medicine in Utah was suspended, they filed a lawsuit in federal court seeking the restoration of their license and damages for infringements upon their property and liberty rights. *Id.* at 875. The district court determined that the *Younger* abstention doctrine applied, and the tenth Circuit Court of Appeals upheld this decision, finding no error in the district court's application of the doctrine. *Id.* at 876. The court's rationale for this decision was that the relief requested by the appellant would interfere with a state proceeding that was already underway. *Id.* at 875. Additionally, the state judiciary provided an adequate venue for the appellant to voice their constitutional grievances and the licensing and disciplining of medical professionals was a significant state interest. *Id.* at 876. *See also* 17A Moore's Fed. Practice, *supra* note 4 (defining abstention). Abstention pertains to a set of principles that enable a federal court to abstain from exerting its lawful jurisdiction and, instead, either postpone or dismiss a federal lawsuit out of respect for concurrent legal proceedings taking place in a state court. *Id. See also* Dawson v. Dylla, 534 F. Supp. 3d 1360, 1362 (D. Colo. 2021) (offering more background information). Dawson and Dylla were married in New Mexico. *Id.* Dawson was an information technology consultant, and Dylla was an attorney. *Id.*

6. *See Dawson*, 2021 LEXIS U.S. App 33386 at *1-2 (reviewing Dawson family history). Dawson met and married Dylla in New Mexico in 2011. *Id.* The parties separated in 2015. *Id.* When Dylla conveyed to Dawson that she wished to relocate with their child to the United States, Dawson opposed the idea. *Id.*

7. *See id.* at *2-7 (summarizing Manchester family court order). The Manchester family court granted Dawson parenting time on at least two occasions in the United

ter custody order in Elbert County, Colorado, and petitioned to restrict Dawson's parenting time.[8] The Elbert County court held a hearing in February 2017 to discuss the parenting issues both parties alleged.[9] Two years later, after Dawson failed to adhere to a

States and one occasion in the United Kingdom. *Id.* at *2. His parenting time in the United States would be for a period of three to four weeks, and the parenting time in the United Kingdom would be for a minimum of two weeks. *Id.* The court also determined that the parents would alternate Christmas with the child. *Id.* Finally, the court allowed video calls between the child and nonphysical custodial parent via Google Hangouts ranging from five to fifteen-minute calls every other day. *Id.*

8. *See id.* at *3 (describing Dylla's actions). Dylla filed a petition in the state district court for Elbert County, Colorado in which she voiced specific concerns she had about the child's descriptions of Dawson's behavior while in England. *Id.* The court denied the petition and highlighted the fact that the Manchester family court's ruling would not be reviewed by the court. *Id.* The court held that the Manchester court considered the same information when allocating Dawson and Dylla's parenting time. *Id.* The court reasoned that Dylla had not alleged any physical or emotional abuse on behalf of Dawson toward the child since the initial Manchester court order. *Id.* The court stated it would not "act as a reviewing court" for that foreign court's determination. *Id.* Shortly after, in 2017, Dawson filed an emergency motion in state court, asking the court to restrict Dylla's parenting time. *Id.* at *4. *See also* Registration of Child-Custody Determination, COLO. REV. STAT. § 14-13-305(1) (outlining steps for entering child-custody orders determined by another state). Section 14-13-305 of the Colorado Revised Statutes states that:

> (1) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate district court in this state:
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> (a) A letter or other document requesting registration;
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> (b) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
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> (c) Except as otherwise provided in section 14-13-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody, allocated parental responsibilities, or granted visitation or parenting time in the child-custody determination sought to be registered.

Id.

9. *See Dawson*, 2021 U.S. App. LEXIS 33386, at *4 (describing procedural history). The court denied Dawson and Dylla's motions against each other about limiting parenting time. *Id.* at *3-4. The court stated that there was no evidence that the child was in any physical or emotional danger in the presence of either parent. *Id.* at *4. The state court redressed this issue by allowing Dawson "make up" parenting time for his lost time in Colorado and the United Kingdom. *Id.* The court also devised a framework for the location and method of how Dawson may exercise his make-up parenting time with Rory. *Id. See also Dawson*, 534 F. Supp. 3d at 1362 (offering timeline of facts). After denying Dawson and Dylla's petitions against each other, the court stated that it would not "act as a reviewing court for that foreign court's determinations." *Id.* Dawson filed an emergency verified motion to restrict Dylla's parenting time. *Id.* The court dismissed the urgent request, stating that Dawson did not provide enough evidence to support his

court order to appear for a hearing, the court issued a bench warrant for Dawson's arrest and granted Dylla temporary custody.[10]

In January 2021, Dawson filed a petition with the Elbert County court against Dylla seeking expedited enforcement of the Manchester family court's custody order pursuant to the Hague Convention and ICARA.[11] If granted, Dawson's injunctive relief would require Dylla to immediately comply with the Manchester family court's custody order from 2016.[12] The district court dismissed Dawson's petition and held that the Hague Convention and ICARA were inapplicable.[13] On appeal, the Tenth Circuit

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claim that the child was at immediate risk of physical or emotional harm. *Id.* at 1363. Furthermore, the court emphasized the importance of regular parenting time for the child's overall well-being, as previous orders have already determined. *Id.* The court instructed both parties to adhere to the existing parenting time orders. *Id.* Dawson alleged that the last time he saw his child on video call was on July 25, 2019. *Id.* at 1364. He also alleged that Dylla cut off all video communication between him and Rory. *Id.*

10. *See Dawson*, 2021 U.S. App. 33386 LEXIS, at *4 (summarizing custody order granted by court). This custody order also forbade the child's school from releasing the child to Dawson's custody. *Id.* Dawson filed another motion with the state court wanting enforcement of the Manchester family court custody decision, but because of the bench warrant for his arrest, the state decided that it was in the best interest of the child not to be in an unsupervised parenting time. *Id.* at 5. The court, however, also indicated that Dawson could have parenting time with the child if supervised by a professional supervisor in Elbert County, Colorado. *Id.* Soon after, the state court ordered Dylla and Dawson to contact the division clerk for a status conference. *Id.* Neither Dylla nor Dawson complied with the state court's order, resulting in the court's denial of all pending motions and closing the case. *Id. See also Dawson*, 534 F. Supp. 3d at 1364 (outlining state court's reiteration). The state court restated that on February 11, 2019, it issued a warrant for Dawson's arrest and that "until that warrant is resolved, it is in the best interests of the child not to be with Respondent in unsupervised parenting time lest he be arrested on the outstanding warrant." *Id.* The state court then suspended Dawson's unsupervised parenting time with the child. *Id.* At one point, Dawson submitted a request to the Elbert County District Court to enforce the custody order made by the Manchester court. *Id.* On December 13, 2019, the court rejected his request and reiterated its previous decision. *Id.* He was only allowed to spend time with the child if a professional supervisor from Elbert County, Colorado, was present. *Id.*

11. *See Dawson*, 2021 U.S. App. LEXIS 33386, at *5 (asserting Dylla's noncompliance with Manchester order). Dawson initiated federal proceedings against Dylla pro se. *Id.*

12. *See id.* at *6 (alleging violation of Manchester custody order). Dawson asked the court to require Dylla to arrange a two week parenting visit for the child in England, restore the access to video calls, and conform with the requirements to inform and consult with Dawson on matters where information and consultation is required by law. *Id.*

13. *See id.* at *8-9 (dismissing Dawson's claim). The district court order stated that the Hague Convention and the ICARA were inapplicable. *Id.* The district court reasoned it was because:

> "[t]he evidence establish[ed] that there ha[d] been no abduction or wrongful removal of the parties' child," and, instead, that "Dylla brought [the child] to the [United States] in 2016 with the express

analyzed whether the federal district court should have abstained from exercising jurisdiction over this claim by applying the abstention test from *Younger v. Harris*.[14] The Court determined that all three requirements of the abstention test were met, making it unnecessary for the Court to resolve the issue.[15]

> permission and order of the family court in Manchester, England," and "[t]he child's habitual residence has been in the U.S. and in particular in Colorado, since that time."

Id. The district court also explained that "'a federal court in Denver, Colorado is not the place to [resolve their issues].'" *Id.* at *10.

14. *See Dawson*, 2021 U.S. App. LEXIS 33386, at *13 (determining if district court ceded subject matter jurisdiction). It is generally understood that all family issues are traditionally a state concern. *See also* Younger, v. Harris, 401 U.S. 37, 37 (1971) (articulating three elements for courts to abstain from hearing certain issues). This is not an unusual situation where federal intervention is necessary. *Id.* at 54. *See also* Weitzel v. Div. of Occupational & Prof'l Licensing of Dep't of Com., 240 F.3d 871, 874 (10th Cir. 2001), 240 F.3d at 875 (articulating abstention elements). Abstention elements are: (1) there is an ongoing criminal, civil, or administrative proceeding; (2) the state court provides an adequate forum to hear the claims raised in the federal complaint; and (3) the state proceedings involve important state interests. *Id. See also* 17A Moore's Fed. Practice, *infra* note 25 (defining abstention generally). Abstention generally

> refers to a group of doctrines by which a federal court may decline to exercise its otherwise valid jurisdiction, and to either stay or dismiss federal litigation, in deference to a parallel state court proceeding. The term "abstention" generally is used to describe the judicial doctrines that the United States Supreme Court has articulated, as opposed to Congressional enactments that accomplish the same purpose in certain circumstances.

Id. Specifically, *Younger* abstention is based on a federal-state comity. *Id.* Federal-state comity is synonymous with the term "Our Federalism." *Id.* This idea refers to the respect for state functions and the faith that the federal system would be better off if the states had the liberty to perform their own function in their own way. *Id. But see* Carl Rowan Metz, Comment, *Application of the Younger Abstention Doctrine to International Child Abduction Claims*, 69 U. CHI. L. REV. 1929, 1931 (contending underlying interests of *Younger* abstention doctrine). Functionally, "[t]he interest of comity, a fundamental justification of the *Younger* doctrine, is only marginally served when the federal claim could not have been raised with the confines of the state proceeding." *Id.*

15. *See Dawson*, 2021 U.S. App. LEXIS 33386, at *13 (declining jurisdiction in favor of state trial proceedings). The court applying *Younger* abstention rule. *Id.* The court explained: "*Younger* abstention applies when (1) there is an ongoing criminal, civil, or administrative proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests." *Id. See also Weitzel*, 240 F.3d at 875 (explaining consequences of *Younger* abstention). If the requirements are all satisfied with no applicable exception, then a federal court must abstain from hearing the case. *Id. See also* Sam F. Halabi, Article, *Abstention, Parity, and Treaty Rights: How Federal Courts Regulate Jurisdiction under the Hague Convention on the Civil Aspects of International Child Abduction*, 32 BERKELEY J. INT'L L. 144, 162 (2014) (explaining why federal district courts justify abstention). Federal district courts usually refer to the state's interests in child custody adjudication to justify abstention. *Id.* Factors such as a child's maturity, risk of

In 1988, Congress expressly implemented the provisions of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (The Hague Convention) when they passed the International Child Abduction Remedies Act.[16] The underlying goal of both the Hague Convention and ICARA is an international, concerted endeavor to protect children from the harmful effects of international child abduction.[17] The plain language of ICARA unambiguously and expressly confers upon state and federal courts concurrent jurisdiction over ICARA actions without any distinction between access claims and return claims.[18]

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psychological harm, risk of physical harm, temporary care, foster care are all considered when deferring to abstention. *Id.* Decisions under *Younger* "frequently turn on the presence of state interests or the application of state law in parallel state proceedings." *Id.* at 163. *See also* Ann Althouse, *The Misguided Search for State Interests in Abstention Cases: Observations on the Occasion of Pennzoil v. Texaco*, 63 N.Y.U. L. REV. 1051, 1053 (1988) (asserting federal courts should utilize abstention if it advances federal interests). Further contending that abstention furthers treaty interest in the adjudication of removal claims. *Id.*

16. *See* 22 U.S.C. § 9001-10 (2000) (implementing Hague Convention into legislation). The Hauge Convention is meant to: "empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims." *Id. See also* Farsheed Fozouni, Note, *International Child Abduction - Second Circuit Finds Federal Right of Action for Visitation Rights Under Federal Law Implementing the Hague Convention on Civil Aspects of International Child Abduction*, 67 SMU L. REV. 195, 196 (summarizing ICARA). The ICARA was enacted "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access." *Id.* The goal of this legislation was to prevent parents from abducting their children and removing them to a foreign country to gain an upper hand in a custody dispute. *Id.*

17. *See* Melissa L. Thompson, *Will Noncustodial Parents Who are Refused Visitation With Children Also Be Turned Away from U.S. Courts? Judicial Remedies in Access Cases Under the Hague Convention in Cantor v. Cohen and Ozaltin v. Ozaltin*, 82 U. CIN. L. REV 1005, 1025 (2014) (analyzing access cases). Courts have failed to justify the denial of private action in access cases time and time again. *Id.* at 1026.

18. *See* Thompson, *supra* note 17, at 1012 (indicating intent of Congress when drafting ICARA). ICARA was enacted by Congress to implement The Hague Convention on the Civil Aspects of International Child Abduction. *Id.* It expresses two objectives: "to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and to ensure that rights of custody and of access under the law of one contracting state are effectively respecting in the other Contracting States." *Id.* at 1006. *See also* Halabi, *supra* note 15, at 181 (analyzing federal and state judicial management methodology of Hague Child Abduction Convention claims). ICARA requires horizontal parity between state judgments and vertical parity between federal and state courts. *Id. See also* 42 U.S.C. § 11601(b)(1) (explaining procedures for Convention). ICARA explicitly states that its purpose is to establish procedures for the implementation of the Convention in the United States. *Id.* It also states that it should be construed as being "in addition to and not in lieu of the provisions of the Hague Convention." *Id. See also* 22 U.S.C. § 9003(b) (instructions for access to cases). People who are,

The Hague Convention, however, distinguishes between rights of custody and rights of access.[19] While ICARA does not expressly define custody rights, it does define access rights as "visitation rights."[20] Access rights are the natural counterpart to custody rights belonging to the noncustodial parent.[21]

> seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

Id. *See also* Brooke L. Myers, *V. Treaties And Federal Question Jurisdiction: Enforcing Treaty-Based Rights In Federal Court*, 40 LOY. L.A. L. REV. 1449 (2007) (articulating underlying purpose for enacting Hague Convention). As a matter of policy, "[s]ignatory countries wanted to discourage parents from forum shopping but acknowledging that a child's mandated return to one parent might endanger both child and parent, they adopted some affirmative defenses to wrongful removal and retention claims." *Id.* at 1486. *See also* 42 U.S.C. § 11601(b)(1) (2006) (expressly stating Congress' desire for concurrent jurisdiction between federal and state courts). Congress recognizes the need for federal courts to uphold matters involving international treaties and how it may coincide with traditional state concerns. *Id.*

19. *See* The Hague Convention, *supra* note 1, at 2 (distinguishing between access and custody rights). Article 5 defines the following rights of custody and rights of access:

> a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
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> b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Id. *See also* Priscilla Steward, *Access Rights: A Necessary Corollary to Custody Rights under the Hague Convention on the Civil Aspects of International Child Abduction*, 21 FORDHAM INT'L L.J. 308, 331 (1997) (identifying drafters' weakness). The Convention has no set clause to enforce Article 21's rights of access. *Id.* "Experts say that one of the Convention's biggest failures is its ineffectiveness at securing rights of access." *Id.* It is crucial to differentiate between custody rights and access rights in determining whether the removal or retention of a child is wrongful, as per the Hague Abduction Convention. *Id.* at 333. The Convention defines custody rights as encompassing the responsibility for the child's care and the right to decide their habitual residence. *Id.* Conversely, access rights refer to the permission to take the child for a limited duration to a location other than their habitual residence. *Id.* It is worth noting that the concept of custody rights under the Convention is distinct and not necessarily the same as what a particular nation may define as custody rights. *Id.* Therefore, judicial authorities deciding matters under the Convention will utilize the definition of custody provided by the Convention to determine if a parent has custody rights. *Id.* *See also* Ozaltin v. Ozaltin, 708 F.3d 355, 367 (2d Cir. 2013) (pointing to Supreme Court's definition of right of custody). The Supreme Court elaborated that "the Convention's broad definition" of 'rights of custody' is not constrained to 'traditional notions of physical custody.'" *Id.*

20. *See* 22 U.S.C. § 9002(7) (defining rights of access as visitation rights).

21. *See Legal Analysis of the Convention*, 51 FED. REG. 10494, https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/Legal_Analysis_of_the_Convention%20(2).

One federal court has interpreted the language of ICARA very narrowly and denied jurisdiction of access claims, while another federal court has allowed for it.[22] One federal court determined that because the treaty lacks a specific remedy for violation

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pdf. "Article 29 permits the person who claims a breach of custody or access rights . . . to bypass the Convention completely by invoking any applicable laws or procedures to secure the child's return." *Id.* The State Department's legal analysis of the convention states that access rights are "protected by [T]he [Hague] [C]onvention but to a lesser extent than custody rights" and "the remedies for breach of access rights are those enumerated in Article 21 [of The Hague Convention]." *Id. See also* The Hague Convention, *supra* note 1, at 5 (identifying remedies for rights of access). Article 21 explains that in order to secure the proper exercise of rights of access, an individual is able to petition to the Central Authorities of the Contracting States, similar as an individual would for an application for the return of their child. *Id.* Central authorities have the discretion to initiate or assist in proceedings to protect and secure the rights of access for an individual. *Id.* A return-order would not be an appropriate remedy under Article 21 for an individual to secure and exercise their rights of access. *Id. See also* Elisa Perez-Vera, *Explanatory Report on The 1980 Hague Child Abduction Convention*, HAGUE CONFERENCE PERMANENT BUREAU 426 (1982), https://assets.hcch.net/upload/expl28.pdf (laying out groundwork of drafter's intent). While custody rights may be held by legal persons, including institutions and other bodies, access rights by their nature may only be held by individuals, ordinarily the father or mother of the child. *Id.* at 450-51. The United States and the United Kingdom are both signatories of the Hague Convention. *Id.* at 426. *See also* Rhona Schuz, *Families and Children in International Law: The Hague Child Abduction Convention and Children's Rights*, 12 TRANSNAT'L CONTEMP. PROBS. 393, 400 (acknowledging role of Central Authority). Each member state to the Hague Convention must appoint a Central Authority. *Id.* A Central Authority's main function is to collaborate with other Central Authorities from other member states. *Id.* The aggrieved parent will make an application to the Central Authority in his or her own country, who will then send the application to the Central Authority in the country of the other parent. *Id.*

22. *See* Cantor v. Cohen, 442 F.3d 196, 201 (4th Cir. 2006) (denying subject matter jurisdiction). The court also cites various cases involving access claims under the Hague Convention and ICARA that have denied exercising subject matter jurisdiction. *Id. See generally* Adams ex rel. Naik v. Naik, 363 F. Supp. 2d 1025, 1030 (N.D. Ill. 2005) (finding Court lacked authority to order access following determination that removal was not wrongful); Wiggill v. Janicki, 262 F. Supp. 2d 687, 689 (S.D.W. Va. 2003) (holding Court did not have jurisdiction to enforce parental rights of access); Neng Nhia Yi Ly v. Heu, 296 F. Supp. 2d 1009, 1011 (D. Minn. 2003) (ruling Court lacked jurisdiction to issue order to secure father's access rights); Teijeiro Fernandez v. Yeager, 121 F. Supp. 2d 1118, 1125 (W.D. Mich. 2000) (declaring no jurisdiction over claim of violation of access rights); Bromley v. Bromley, 30 F. Supp. 2d 857, 860-61 (E.D. Pa. 1998) (denying federal court's authority to enforce father's rights of access and determining state court appropriate forum for grievances). *See also Ozaltin*, 708 F.3d at 371 (holding its disagreement of individual's right of action with Fourth Circuit); Katherine L. Olson, Article, *Access For Access: Ensuring Access To Federal Courts For Parents Seeking To Exercise Rights Of Access Under The Hague Convention On The Civil Aspects Of International Child Abduction*, 63 CATH. U.L. REV. 1049, 1051 (2014) (recognizing *Ozaltin* holding); Ann Laquer Estin, *Symposium On Hague Convention On The Civil Aspects Of International Child Abduction, The Hague Abduction Convention And The United States Supreme Court*, 48 FAM. L.Q. 235, 246 (2014) (comparing *Ozaltin* holding with *Cantor* holding).

of access rights, federal courts lack subject matter jurisdiction entirely.[23] Instead, these courts have generally deferred access claims to state courts.[24] Pursuant to *Younger v. Harris*, courts follow the doctrine of abstention when there are pending state proceedings involving important state interests.[25]

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23. *See* Croll v. Croll, 229 F.3d 133, 143 (2d Cir. 2000) (holding access rights do not constitute right of custody). *See also* Halabi, *supra* note 15, at 182 (interpreting one federal court's rejection of exercising jurisdiction); Timothy L. Arcaro, Article, *Think Fast: Post Judgment Considerations In Hague Child Abduction Cases*, 23 SUFFOLK J. TRIAL & APP. ADV. 237, 240 (2018) (reasoning why some federal courts deny jurisdiction). "Federal courts have generally deferred to state court jurisdiction on access rights set forth in Article 21 given the Domestic Relations Exception and ongoing state court jurisdiction over child custody matters." *Id.* at 240-41.

24. *See* Myers, *supra* note 18, at 1489 (recognizing contradicting actions despite Congress's clear intent). *See also* Arcaro, *supra* note 23, at 240-41 (explaining right to control family law belongs to state law and not federal laws). *See also* Libby S. Adler, Article, *Federalism and Family*, 8 COLUM. J. GENDER & L. 197 (1999) (suggesting that federalism includes family law matters). "The federal courts too have spoken on a number of family matters that implicate constitutional rights to privacy, equal protection, and due process, such as the use of contraceptives in the privacy of the marital bedroom and the relative rights of putative and presumed fathers." *Id.* at 198.

25. *See* 17A Moore's Federal Practice – Civil §120.22 [*hereinafter* Moore's Fed. Practice] (summarize different types of abstention). There are different types of abstention. *Id.* For example,

> Younger abstention is based on federal-state comity: that is, a proper respect for state functions and the belief that the federal system will fare best if the states have the freedom to perform their separate functions in their separate ways. This federal-state comity is often referred to as "Our Federalism."

Id. Younger abstention also applies to state civil proceedings involving important state interests. *Id.* It also applies to state administrative policies involving important state interests if state procedure allows adequate procedure to raise federal questions. *Id. Younger* abstention requires stay of federal suit that includes claims not cognizable in state court. *Id.* A rationale for *Younger* abstention is to avoid duplicative suits and denial of equitable relief if an adequate legal remedy exists. *See also* Halabi, *supra* note 15, at 163 (explaining federal district abstention in Hague Abduction Convention cases.). Federal courts have used three different doctrines to justify their abstention from hearing these cases. *Id.* The three principal doctrines are *Younger*, *Colorado River*, and *Rooker-Feldman*. *Id.* The *Younger* abstention is based on state custody and dependency interest. *Id.* The *Colorado River* doctrine is driven by the view of displeasure toward litigation and the duplication of judicial resources. *Id.* at 169. It could be argued that the *Colorado River* doctrine is not a form of abstention doctrine at all, as it is prudential and discretionary. *Id.* The *Rooker-Feldman* doctrine prohibits federal litigation stemming from failed state court proceedings. *Id.* at 171. The *Rooker-Feldman* doctrine "erects a jurisdictional bar to lower federal courts' review of state court judgments based on Congress's decision to vest only the US Supreme Court with appellate jurisdiction over those judgments." *Id.* This doctrine is not strictly used as an abstention device. *Id. See also* Althouse, *supra* note 15, at 1086 (offering advantages of state courts working alongside federal courts to further federal interests). State courts are more equipped to oversee and manage potential violations of federal rights that may

Younger abstenstion applies when (1) there is an ongoing criminal, civil, or administrative proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests."[26] The Supreme Court extended *Younger* abstention to state family law proceedings.[27] Federal courts have used

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arise in their own legal proceedings as long as they do not perpetuate such violations. *Id.* Additionally, in certain states and historical periods, state courts may even surpass federal courts in safeguarding individual rights by diligently enforcing federal law and establishing state-based legal options. *Id.* The application of *Younger* abstention can foster and uphold the effectiveness of state courts, particularly in preparation for a scenario where federal courts may not adequately protect the principles enshrined in the federal Constitution. *Id. See also* Ion Hazzikostas, Note, *Federal Court Abstention and the Hague Child Abduction Convention*, 79 N.Y.U. L. REV. 421 (pointing to recent abstentions from federal district courts). Despite Congress's express intent of state and federal courts having concurrent jurisdiction over ICARA claims, quite a few federal district courts have been abstaining from hearing such claims where there is already a custody proceeding ongoing. *Id.*

26. *See Younger*, 401 U.S. at 37 (laying out framework when federal courts should abstain from hearing claims in federal court). The court describes a way to describe this type of abstention as "Our Federalism." *Id. See also* Halabi, *supra* note 15, at 163 (delving into *Younger* abstention doctrine). The *Younger* abstention is based off Congress's historical practice of allowing very few exceptions allowing federal courts to interfere with state proceedings. *Id.*

27. *See* Halabi, *supra* note 15, at 165 (explaining *Younger* abstention extending to Hague Child Abduction Convention context). The Supreme Court stated that:

> [w]hile federal appellate courts have diverged in the precise wording of *Younger* criteria and the depth of involvement required by states and their agencies, three general inquiries have emerged in the Hague Child Abduction Convention context: (1) there is a judicial proceeding to which the federal plaintiff is a party and with which the federal proceeding will interfere, (2) the state proceeding must implicate important state interests, and (3) the state proceeding must afford an adequate opportunity to raise federal claims.

Id. See generally Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423 (1982) (holding comity and federalism crux of *Younger* abstention doctrine). The Supreme Court held that even though the state bar proceedings were purely administrative, the *Younger* abstention doctrine mandates federal abstention due to the underlying theory of comity and federalism. *Id.* at 431-32. *See also* Yang v. Tsui, 416 F.3d 199 (3d Cir. 2005) (extending *Younger* abstention to civil proceedings). *See generally* Althouse, *supra* note 15, at 1077 (explaining extension of *Younger* abstention doctrine through *Moore v. Sims*). The Supreme Court applied the *Younger* abstention to a state-initiated proceeding to terminate parental rights. *Id.* This set a precedent by breaking away from criminal proceeding comparisons. *Id.* The Court simply announced that the "threat to our federal system posed by displacement of state courts by those of the National Government . . . is also fully applicable to civil proceedings in which important state interests are involved." *Id.* at 1077-78. *See also* 17A Moore's Federal Practice - Civil § 122.71 (2023) (expounding *Younger* abstention doctrine to pending state civil proceedings). The Supreme Court of the United States has applied the *Younger* abstention doctrine to certain civil enforcement proceedings when they generally concern state

this doctrine to maintain state interests and protect the integrity of their judicial systems.[28]

In *Dawson v. Dylla*, the Court relied on the general framework of the *Younger* abstention doctrine to conclude that the federal district court should have abstained from hearing this claim.[29]

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proceedings "akin to criminal prosecution." *Id.* "A state actor is routinely a party to the state proceeding and often initiates it [,]" which is how *Younger* abstention doctrine was extended to proceedings related to family law. *Id.* For example, a state initiated a proceeding to gain custody of children that were allegedly abused by their parents in *Moore v. Sims*. *Id.*

28. *See* Halabi, *supra* note 15, at 164 (offering justification for abstention doctrines). Using Justice Black's broader reading of the *Younger* doctrine, this doctrine is based on Article III's vested power given to federal courts to maintain the protection of federal rights with few acts of interference with state courts. *Id. See also* Moore's Fed. Practice, *supra* note 25 (portraying all abstention doctrines). There are five recognized abstention doctrines: *Pullman*, *Thibodaux*, *Buford*, *Younger*, and *Colorado River*. *Id.* These doctrines are used to avoid unnecessary constitutional issues, avoid interfering with state administrative procedures, avoid interference with pending state proceedings, abstain for reasons of sound judicial administration, and when there is unclear state law in diversity cases. *Id.* Despite abstention doctrines available to federal courts, federal courts usually have a "virtual unflagging obligation to exercise jurisdiction given them." *Id.* The policies behind the *Younger* abstention doctrine include "avoidance of duplicative suits and the general principle that equitable relief will not issue if the moving party has an adequate remedy at law." *Id. See generally* Joshua G. Urquhart, Article, *Younger Abstention and Its Aftermath: An Empirical Perspective*, 12 NEV. L.J. 1, 20 (analyzing all three elements and their consequences). Commenters have argued that "*Younger* abstention amounts to the improper judicial veto of the Article III jurisdiction conveyed by Congress in the Civil Rights Act of 1871, the precursor to 42 U.S.C. § 1983." *Id.* They also assert that the *Younger* abstention doctrine also logically lacks a coherent foundation as many of the proffered basis for the doctrine conflicts with one another. *Id. See also* Althouse, *supra* note 15, at 1053 (outlining pros and cons of federal intervention). If a case involving federal issues is already being processed by a state court, transferring it to a federal court may cause significant delays and inefficiencies. *Id.* Furthermore, federal involvement in such cases can reduce the ability of state courts to enforce federal law. *Id.* This is not just because it demonstrates a lack of confidence in state courts but also because it deprives them of opportunities to develop expertise in applying and enforcing federal law. *Id.*

29. *See Dawson*, U.S. App. LEXIS 33386 at *12-13 (concluding district court should have abstained). While explaining reasoning with regard to whether or not to hear this access claim, the Tenth Circuit found it unnecessary to weigh in on the issue of whether ICARA authorizes federal courts to hear access claims. *Id.* The Court began its analysis by assuming even if Congress authorized federal courts to hear this type of claim, then the court would have to abstain from exercising jurisdiction because of precedent. *Id. See generally* Moore's Fed. Prac., *supra* note 25, at §122.72 (pointing to appropriate circumstance for *Younger* abstention). "*Younger* abstention is appropriate only if important state interests are involved." *Id.* Domestic relations of husband, wife, parents, and child implicate important state interests for purposes of *Younger* abstention per *Thompson v. Romeo*. *Id.* In a case involving an Indian tribe's attempt to prevent the collection of taxes on fuel exchanged between tribes, the Tenth Circuit determined that *Younger* abstention was not necessary, even though there were ongoing state criminal proceedings. *Id.* The court ruled that the key issues at hand were

The Court reasoned that despite the possibility of ICARA allowing federal courts to hear this type of claim, the federal district court should have abstained from exercising jurisdiction due to the satisfaction of the three elements of the *Younger* abstention doctrine.[30] In its discussion of whether ICARA permits federal courts to hear access claims, the Court recognized contrasting decisions from two different circuit courts.[31] While the Court did

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related to federal Indian law, specifically whether states are allowed to impose taxes on tribes and if the state tax scheme applied to Indian tribes violates federal law. *Id.* Additionally, the court rejected the notion that the state criminal proceedings involved an important state interest, as they were not central to the federal Indian law issues. *Id.* Finally, the court determined that the state's enforcement of the tax violated tribal sovereign immunity. *Id.* *See* Halabi, *supra* note 15, at 163-64 (explaining concept of "Our Federalism"). The idea being conveyed is not a particular concept, but rather a framework that values the lawful concerns of both State and National Governments. *Id.* *See* Urquhart, *supra* note 28, at 8 (maintaining *Younger* abstention doctrine's applicability). The Supreme Court expanded its holding of *Younger* to require abstention in cases where there was a parallel state civil enforcement lawsuit. *Id.* at 7. "Today, many of the state proceedings warranting *Younger* abstention do not involve a court at law capable of awarding an adequate legal remedy to address the equitable relief implicated by the federal claim; therefore, technical equitable jurisdiction rules cannot be dispositive." *Id.* at 8. The theory that *Younger* abstention doctrine's basis is "anything other than abstract notions of comity or federalism should be rejected." *Id.*

30. *See Dawson*, U.S. App. LEXIS 33386 at *13 (reviewing this claim under purview of abstention). The Court identified the three elements needed for a court to abstain from hearing an issue. *Id.* The Court analyzed all three elements separately. *Id.* *See also* Moore's Fed. Prac., *supra* note 25 (identifying all types of abstention). *See also* Althouse, *supra* note 15 at 1077 (alleging elasticity of using abstention justification). The Supreme Court of the United States seems to have pushed the boundaries of the *Younger* abstention doctrine to the extreme point where it has found it easier to conclude that abstention is required. *Id.* at 1078. The analysis of federal interests creates a concept of abstention that prioritizes deferring to ongoing state court proceedings in order to promptly address federal defenses, enhance understanding of federal law and proficiency in its application, and encourage state courts to be more receptive in upholding federal rights. *Id.* at 1077-78. *See* Urquhart, *supra* note 28, at 8 (introducing limiting applicability of *Younger* abstention doctrine). The Supreme Court's expansion of the *Younger* abstention doctrine is limiting per their devised mechanical test to determine whether abstention is appropriate. *Id.* The Court in *Middlesex County Ethics Committee* held that "comity and federalism concerns underlying the *Younger* doctrine mandated federal abstention, despite the fact that the state bar proceedings were purely administrative." *Id.*

31. *See Dawson*, U.S. App. LEXIS 33386 at *13 (identifying issue's circuit split). The Court cites *Ozaltin*, stating that the Second Circuit concluded that ICARA expressly authorizes federal courts to hear access claims. *Id.* The Court also cites to *Cantor*, stating that the Fourth Circuit concluded that federal courts are not authorized under ICARA to hear access claims. *Id.* *See also* Ozaltin v. Ozaltin, 708 F.3d 355, 355 (2d Cir. 2013) (rejecting argument that federal court lacked jurisdiction to enforce father's right of access). The father of two children sought awards for all necessary expenses and required the mother to return their children to Turkey, despite the mother having primary custody of the children. *Id.* The court held that the award of all necessary

acknowledge the circuit split, it stated that, to date, it has not weighed in on that issue.[32]

In discussing whether the district court should have abstained from hearing this case, the Court examined the three elements of the *Younger* abstention test.[33] When applying the test's first element, the Court reasoned that the present case was another attempt to assert the same access issue in this federal action as was asserted over the previous five years in state court.[34] The Court

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expenses was inappropriate. *Id.* The court reasoned that even though the father met his burden of proof by showing that he retained custody rights under Turkish Law, he may have engaged in forum shopping and that the mother has a reasonable basis for removing the children to the U.S. *Id.* The court also reasoned that in regard to the father's visitation claim, ICARA creates a federal right of action to enforce "access" rights protected under the Hague Convention. *Id. See also* Cantor v. Cohen, 442 F.3d 196, 196 (4th Cir. 2006) (accepting argument that federal courts lack jurisdiction to enforce access rights). A mother petitioned for the return of and access to her four children to Israel, who were living with their father in the United States. *Id.* The court held that the mother has no right to initiate these judicial proceedings for access claims under the Hauge Convention. *Id.* The court reasoned that under 42 U.S.C.S. § 11601, the federal courts were not authorized to exercise jurisdiction over them. *Id.*

32. *See Dawson*, U.S. App. LEXIS 33386 at *13 (clarifying Court's actual issue at hand). The Court did acknowledge Dawson's assertion of a circuit split as correct. *Id.* The court also acknowledged that this Court has not considered its position on whether or not federal courts have authority to exercise jurisdiction on access claims. *Id.* The Court ultimately decided to refrain from clarifying their stance. *Id. See also* Hazzikostas, *supra* note 25, at 425 (pointing out federal district courts have chosen to abstain from exercising jurisdiction). Instead of entertaining the issue, several federal district courts have abstained from exercising jurisdiction. *Id.* "This has had the effect of forcing these plaintiffs, who are the alleged victims of international child abduction, to seek redress for their federally created causes of action in state courts." *Id.* Congress's express scheme of concurrent jurisdiction, however, allows the potential for forum shopping, "which is abusive of both judicial resources and the best interests of the children involved in such proceedings." *Id.* This conflicting tension causes courts often encounter a confusing and frequently contradictory landscape when it comes to background law. *Id.* Courts that fail to note differences such as the stage of advancement of state proceedings and the actions of the left behind parent prior to their initiation of the federal ICARA claim, "severely handicap themselves in weighing adequately the competing interests at stake in the particular cases that come before them." *Id.* at 432.

33. *See Dawson*, U.S. App. LEXIS 33386 at *13 (examining elements of *Younger* abstention test). The Court concluded that this claim would be a perfect application of the *Younger* abstention doctrine. *Id. See* Urquhart, *supra* note 28, at 8 (noting when *Younger* abstention doctrine can possibly trigger). Courts are permitted to abstain only if all three elements are met. *Id.* The *Younger* abstention doctrine's applicability, however, is mandatory only if certain exceptions are not applicable. *Id.* at 8-9. *See also* Metz, *supra* note 14, at 1936 (discussing ICARA cases dismissed under *Younger*). "There is no traditional state involvement in international child abduction cases." *Id.* The conflicting interest between family relations and ICARA is the most significant consequence of a successful ICARA petition . . . ." *Id.*

34. *See Dawson*, U.S. App. LEXIS 33386 at *13 (satisfying first prong of *Younger* abstention test). The Court proceeded to explain Dawson's inability to comply with a

then examined the second element and concluded that the record made it clear the state court provided an adequate forum to hear the access claims raised by Dawson in this deferral action.[35] The Court then scrutinized the third element and concluded that the state court proceedings involved two important state interests—family relations and enforcing arrest warrants issued by a state

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court order. *Id.* The Court reasoned it was without a doubt because of the state court issued a bench warrant for his arrest because he failed to appear at a hearing regarding child support and allocation of travel costs. *Id.* at 14. The Court generalizes that Dawson's intentions to initiate federal court proceedings were to have a second shot to enforce the Manchester family court order. *Id.* In fact, the Court stated that:

> it is apparent from the record that Dawson chose to initiate these federal proceedings because his efforts at enforcing the Manchester family court's January 11, 2016 custody order in the state court were stymied by his own failure to comply with the state court's orders and the state court's resulting issuance of a bench warrant for his arrest.

Id. *See* Urquhart, *supra* note 28, at 10 (analyzing ongoing state judicial proceeding element). The Supreme Court suggests that abstention may be warranted where there is a pending administrative proceeding before expanding the scope of the *Younger* abstention doctrine to civil matters as well. *Id.* The requirement that the corresponding state proceedings be "ongoing" at the moment of initiating a federal lawsuit is also construed very broadly. *Id.* The Court discarded the notion that *Younger* abstention is appropriate only if state proceedings are initiated before the federal lawsuit. *Id.* at 10-11. Presently, under the Court's interpretation of the doctrine, abstention is appropriate, regardless of which proceeding was initiated first, if the state case was initiated before any substantial hearings on the merits occur in federal court. *Id.* at 11. "[W]here a state proceeding is cited as the basis for abstention, courts will ask whether it 'declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist[.]'" *Id.*

35. *See Dawson*, U.S. App. LEXIS 33386 at *13 (analyzing second prong of *Younger* abstention test). *See* Urquhart, *supra* note 28, at 18 (questioning if presumption against inadequacy justified). Most legal analysts concur that the final element of adequacy is crucial to the entirety of the *Younger* doctrine. *Id.* Many commentators note that the presumption of state forum adequacy serves as the foundational premise of the doctrine. *Id.* Justice Black's ruling unequivocally states that deferring to ongoing state proceedings is inappropriate if it is evident that pursuing federal claims in state court would not provide sufficient safeguarding. *Id.* at 13. The federal plaintiff need not have a viable chance of success in state court, but rather only a valid chance to present their claim. *Id.* at 16. *See also* Hazzikostas, *supra* note 25, at 424 (proffering reasons parents may prefer to litigate their ICARA claims in federal court). There are various reasons why a court may be hesitant to rely solely on state court proceedings. *Id.* These reasons could include apprehension regarding potential biases from outside parties, the attorney's greater understanding of federal procedures, and reluctance to let the purported abductor determine the adjudicating forum. *Id.* In terms of procedure, the left-behind parent can't transfer the entire case to federal court. *Id.* This is because removal is only allowed if the initial claim falls under the federal court's original jurisdiction. *Id.* Regardless, Congress was unambiguous in its bestowal of concurrent jurisdiction, indicating that ICARA claims do not need to be filed in the same forum as any ongoing custody proceedings. *Id.*

court.[36] As the requirements were met and no exceptions applied, the federal court abstained from exercising jurisdiction over this case.[37]

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36. *See Dawson*, 2021 U.S. App. LEXIS 33386 at *14-15 (scrutinizing last prong of *Younger* abstention test). *See also* Althouse, *supra* note 15, at 1053 (scrutinizing state interest arguments). Notably, "[s]tate courts do not deserve deference simply because they are state courts or because they have jurisdiction over a case in which the state has a strong interest." *Id.* Most of the cases that stem from *Younger*, which highlight the importance of state interests, appear to fall prey to the same "blind deference to 'States' Rights'" that Justice Black criticized in *Younger*. *Id.* at 1085. The superficial acknowledgments that "yes, the state has a strong interest here," without any acknowledgment of the federal rights at stake, can understandably cause frustration. *Id.* at 1085-86. An abstention doctrine framed in terms of state interest appears to have veered away from its original principles, to borrow Justice Stevens's *Pennzoil* analogy. *Id.* It is no wonder that many legal analysts recoil at the court's use of the term "Federalism." *Id.* The way in which the cases employ it seems to rationalize turning a blind eye to the enforcement of federal rights without engaging in any examination whatsoever. *Id.* Nevertheless, even those who doubt the current court's reliance on concepts of federalism view the states positively when they work to safeguard and defend individual rights. *Id. See also* Metz, *supra* note 14, at 1937 (identifying justifications for third element made by courts). The courts consistently affirm that child custody issues are a crucial concern for the state, and they determine that concurrent ICARA jurisdiction offers petitioners a satisfactory legal recourse in state courts. *Id. See generally* 30 Moore's Fed. Prac. § 802.23 (Matthew Bender ed., 3d. ed. 2023) (showing protective orders of federal interest). "The strength of the federal interest is direct and overwhelming when . . . authorized by order of a federal court." *Id.*

37. *See* 30 Moore's Fed. Prac., *supra*, note 36, at §802.23 (noting no exceptions applicable). *See also* Martha A. Field, *Abstention In Constitutional Cases: The Scope of the Pullman Abstention Doctrine*, 122 U. PA. L. REV. 1071, 1153 (1974) (explaining how administrative abstention cases differ). "Accordingly, administrative abstention does not merely postpone original federal jurisdiction but actually displaces it, removing entirely from the original federal jurisdiction cases that fall within federal jurisdictional grants." *Id.* at 1153-54. *See also* Moore's Fed. Prac., *supra* note 25, at §122.73 (outlining exceptions to *Younger* abstention doctrine). The exceptions to the *Younger* abstention doctrine include "extraordinary circumstances . . . bad faith prosecutions, and patently unconstitutional laws." *Id.* Federal courts can issue an injunction to halt state criminal proceedings, but only in exceptional circumstances where there is a significant and immediate risk of irreparable harm to constitutional rights. *Id.* This exception does not hold true if the petitioner is requesting an order that mandates the state court to dismiss charges based on the defendant's denial of a speedy trial. *Id.* The exemption could apply if the petitioner demands an order for the state court to carry out a speedy trial, as in this scenario, the violation of the defendant's rights becomes more serious with each passing day of delay, leading to further infringement of constitutional rights. *Id. See* Urquhart, *supra* note 28, at 19 (pointing out tension between second and third element of *Younger* abstention doctrine). Commenters note that when a state proceeding involves a significant state interest, it is unrealistic to anticipate that a state tribunal would disregard that interest and afford a fair chance to litigate a federal claim, mainly if doing so would harm the state's interest. *Id.* In such scenarios, it appears probable that the state forum would not give federal claims the attention and consideration they deserve. *Id.*

The Court's decision in *Dawson v. Dylla* applies case law surrounding the abstention issue without considering the fundamental, underlying logic behind ICARA because the court failed to consider that federal courts have a strong federal interest in foreign relations.[38] The justification of a strong state interest in ICARA access claims are moot since there is no tradition of state involvement in international child abduction cases.[39] The applicability of the *Younger* abstention doctrine in international family matters is counterintuitive since custody cases involving accessibility to a child by a parent will always be a state interest.[40] *Younger* abstention does not promote the maintenance of comity

38. *See Dawson*, 2021 U.S. App. LEXIS 33386 at *15 (declaring judgment). *See also* Metz, *supra* note 14, at 1938 (discussing Second Circuit's explanation). The Second Circuit in *Ozaltin* expressed that "the Hague Convention divests a state court of jurisdiction to resolve custody issues until after the Hague claim has been resolved." *Id.* at 1938-39. *See also* Halabi, *supra* note 15, at 147 (analyzing federal appellate decisions to abstain from hearing treaty claims). Family law is a matter where states have always historically "enjoyed unfettered authority." *Id.* at 154. "[I]n the case of Hague Child Abduction Convention abstention jurisprudence there is an identifiable pattern of federal appellate courts . . . narrowly construing a litigant's invocation of the treaty in a state court proceeding." *Id.* at 147-48. *See also* Hazzikostas, *supra* note 25, at 421 (arguing error on behalf of district courts who have abstained). "[D]istrict courts have erred in their abstention in most cases, to the detriment of the same children the Abduction Convention was enacted to protect." *Id. See* Urquhart, *supra* note 28, at 9 (offering arguments against court's lack of discretion). *The Middlesex County Ethics Committee* factors have been expanded so broadly that almost all parallel state criminal, civil, or administrative enforcement or similar actions will satisfy them. *Id.* "It seems counterintuitive to announce that a court should only abstain in extraordinary or narrow circumstances, and only if certain prerequisites are met, but then relax the requirements so that they provide no real limitation." *Id.*

39. *See* Younger v. Harris, 401 U.S. 37, 54 (1971) (establishing third prong of abstention test). The court explains that "[t]he precise reasons for this longstanding public policy against federal court interference with state court proceedings have never been specifically identified but the primary sources of the policy are plain." *Id.* at 43. The court further explains that the doctrine of equity jurisprudence and the concept of "Our Federalism" outline the purpose of the policy against federal court interference with state court proceedings. *Id. See also* Teijeiro Fernandez v. Yeager, 121 F. Supp. 2d 1118, 1125 (W.D. Mich. 2000) (holding because no specific remedy for access claims therefore access issues left to state courts); Bromley v. Bromley, 30 F. Supp. 2d 857, 860-61 (E.D. Pa. 1998) (stating that "plain language of Convention does not provide federal courts with jurisdiction over access rights"). *See also* Hazzikostas, *supra* note 25, at 432 (describing errors of pooling all circumstances when bringing ICARA claims). "It is an error of oversimplification to lump together all situations in which an ICARA claim is brought in federal district court while a custody proceeding is ongoing in state court into the single category of 'parallel proceedings.'" *Id.*

40. *See* Halabi, *supra* note 15, at 164 (detailing reasoning behind *Younger*). "'Our Federalism' does not mean blind deference to a state's rights any more than it means centralization of control over every important issue in our National Government and its courts." *Id.* "Our Federalism" is a concept that:

between state and federal courts since it fails to acknowledge and respect the significant state interest in child custody matters.[41]

The Tenth Circuit's decision in *Dawson* highlights the tension created by applying an abstention test to ICARA claims.[42]

> represent[s] a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Id. The author also explains how *Younger* abstention evolved from state criminal proceedings to state civil proceedings and state family law proceedings. *Id. See also* Olson, *supra* note 24, at 1072 (identifying policy considerations). There are many public policy points to take under consideration when debating whether a parent has a right to private action. *Id.* One of the main policy considerations in favor of allowing parents to absolve their right to custody in the U.S. court system is the fact that a child may be denied their natural parent. *Id.* "A parent and child may be denied the opportunity to have a meaningful relationship when the noncustodial parent cannot enforce their access rights in federal court . . . ." *Id. See generally* Moore v. Sims, 443 U.S 415, 435 (1979) (applying *Younger* abstention to family law issue).

41. *See* Metz, *supra* note 14, at 1930 (explaining ICARA cases and abstention). The *Younger* abstention doctrine application in ICARA cases does not provide the justified applications of the *Younger* doctrine. *Id.* at 1930-31. A custody dispute will still be enjoined whether or not the ICARA claim is heard in federal or state court. *Id.* at 1931. "This means that federal courts lack a significant reason to defer to an ongoing custody dispute in state court, because that proceeding will be stayed regardless of which court hears the abduction claim." *Id.* Abstention in ICARA cases represents a sharp break from established *Younger* cases. *Id.* at 1941. Further explaining how the fact that since Congress created a statutory cause of action, "federal courts are not justified in invoking *Younger* in order to defeat Congress's intent." *Id.* at 1942. Justifying this by noting how Congress actively considered which courts would be appropriate to grant relief at issue and granted concurrent jurisdiction to state and federal courts. *Id.* Justice Black's opinion in *Younger* emphasized that the opinion does not endorse blindly deferring to states' rights; rather, it supports a policy of judicial noninterference with state processes unless deemed necessary. *Id.* at 1954.

42. *See* Halabi, *supra* note 15, at 164 (explaining *Moore v. Sims*). The Supreme Court expanded *Younger* abstention to be applicable to more broad proceedings. *Id. See also* Olson, *supra* note 24, at 1065 (identifying federal court's lack of remedy). The Supreme Court has clarified that when a parent asserts a violation of their access rights, "federal courts do not have recourse to the return remedy that is provided by the Convention for breaches of custody rights." *Id.* The holding declared by the Supreme Court does not clarify whether or not a parent has a right to access, instead it concerns itself with the remedy aspect of the access assertion. *Id.* It "even implies – the possibility of federal court jurisdiction over claims arising from alleged breaches of access." *Id.* The Supreme Court has also recognized that other courts have used different remedies in the case of an assertion of a violation to rights of access. *Id.* at 1065-66. *See also* Metz, *supra* note 14, at 1953 (highlighting basis of hearing ICARA petitions). When considering an ICARA petition, the court must provide the relief required by law, even if it impacts an ongoing custody dispute. *Id.* This interference is intentional and mandated by Congress to uphold the Hague Convention. *Id.* On the other hand, if a federal court chooses to abstain under *Younger*, it aims to prevent a defendant from misusing the federal court's powers to interfere with state proceedings illegitimately. *Id.* If a

The Court neglected to consider the intent behind Congress' enactment of ICARA when giving concurrent jurisdiction to state and federal courts.[43] The Court failed to balance federal and state interests.[44] As the state custody proceeding will be halted regardless of the location of the ICARA claim hearing, there are few justifiable reasons to argue that "Our Federalism" will be promoted by denying a parent's ability to select a federal venue.[45]

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federal right can only be exercised through a separate proceeding, whether in state or federal court, courts need not view their equitable powers as illegitimate or offensive to state processes when considering these claims. *Id.* The interference with state custody proceedings under ICARA does not stem from courts allowing an improper attempt to derail state proceedings. *Id.* Instead, it occurs because the United States and other signatory countries of the Hague Convention have decided that custody hearings should not proceed until abduction issues are resolved. *Id.* Thus, federal courts should not hesitate to exercise their jurisdiction for this purpose, even if it interferes with a state interest. *Id.*

43. *See also* Metz, *supra* note 14, at 1954 (explaining federal interests). Federal courts have undermined Congress' power to establish jurisdiction over federal causes of action. *Id.* *See also* Halabi, *supra* note 15, at 164 (noting Congress's intent of Doctrine). *See also* Silverman v. Silverman, 267 F.3d at 788 (rejecting *Younger* abstention). *See also* Hazzikostas, *supra* note 25, at 434 (explaining early stage of state proceedings). One of the most common classes of parallel proceedings is where the left-behind parent has surrendered themselves to state court jurisdiction, but the custody proceedings have progressed only minimally when filing an ICARA claim in federal court. *Id.* This is extremely common where the left-behind parent simply lacks knowledge about how these proceedings work. *Id.* Since petitions for return under the Hague Convention are uncommon, many family lawyers are uninformed about the specific knowledge required for filing ICARA petitions. *Id.* at 434-35. "The left-behind parent subsequently may learn of the remedies available to her under ICARA and the Hague Convention, and only then choose to file her ICARA claim in a federal district court." *Id.* at 435.

44. *See* Halabi, *supra* note 15, at 167-68 (describing instance where abstention issue collided with family issue). Similar to state family or trial courts, federal district courts often declare the treaty invalid based on two primary reasons: first, if the parent who was left behind did not have custody rights; second, if they conclude that the child's habitual residence was in the United States. *Id.* at 189. *See also* Olson, *supra* note 22 at 1072 (offering policy considerations to allow federal courts to hear access claims). There are many other policy considerations in favor of allowing parents to vindicate rights of custody by private right of action in U.S. courts. *Id.* at 1072. Most notable is the potential that a parent and child may be denied the opportunity to have a meaningful relationship when the noncustodial parent cannot enforce their access rights in federal court, the exact result in *Cantor*. *Id.* Finally, Supreme Court jurisprudence in related cases interpreting the Convention has not foreclosed the possibility of federal jurisdiction over access claims. *Id.* Accordingly, federal courts should exert jurisdiction over claims for breach of rights of access. *Id.* *See also* Adler *supra* note 24, at 202 (analyzing whether federal interest more consequential in *United States. v. Yazell*). *See* 30 Moore's Federal Prac., *supra* note 36, at §802.23 (explaining in context of protective orders). A federal court has unfettered discretion to issue orders or hear claims. *Id.* It is required of them, however, to balance federal interests against state interests. *Id.*

45. *See* Olson, *supra* note 22, at 1058 (examining options for relief for parents). "Jurisdiction to hear access claims can be a critical factor in granting or denying a

By declining to entertain this issue, the Court put noncustodial parents in a position where they may not find a remedy in either state or federal court, despite ICARA's congressional intent.[46] Adjudication of ICARA claims needs to recognize the probative information that these claims require of federal courts to interfere with state processes.[47] Despite a state's interest in

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parent for relief for the alleged violation of those rights . . . ." *Id.* The grant or denial of relief could consequentially impact a parent's lifelong relationship with their child. *Id. See* Moore's Fed. Prac., *supra* note 25 (defining "Our Federalism"). "Our Federalism" is synonymous with federal-state comity, which clearly does not encompass denying a parent's federal right of action. *Id. See also Younger*, 401 U.S. at 44 (1971) (justifying concept of "Our Federalism"). The court further detailed the concept of "Our Federalism" as one that represents:

> a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Id.

46. *See Dawson*, 2021 U.S. App. LEXIS 33386 at *12 (declining to take stance on circuit split). "We have not, to date, weighed in on this issue. It is unnecessary for us to definitively resolve that issue in this appeal . . . ." *Id. See also* Ozaltin v. Ozaltin, 708 F.3d 355, 372 (2d Cir. 2013) (authorizing federal courts to hear access claims under ICARA). *See also* Olson, *supra* note 22, at 1052 (noting unresolved circuit split on this issue). Also recognizing the method of analysis, the Second Circuit and the Fourth Circuit used. *Id.* at 1063. "[T]he courts in both cases used very similar analytical processes, focusing on the language of the Convention and ICARA—though to varying degrees – as well as the State Department's Analysis and other courts' treatment of the issue." *Id.* The *Cantor* court emphasized its analysis on Article 21 of the Convention and interpreted it very narrowly. *Id.* The *Ozaltin* court, however, used the statutory language found in ICARA and read the Convention in a broader sense. *Id.* at 1064. The only remedy for a breach of access to a child, a parent must petition to the State Department. *Id.* "Otherwise, there is no meaningful relief to parents who have lost access to their children." *Id.* Further explaining the grave consequences of the interpreting and abiding by the purpose of treaties. *Id.* Federal courts have many roles to play, which includes interpreting treaties and implementing legislation based on those treaties. *Id. See also* Metz, *supra* note 14, at 1947 (providing *Younger* abstention inappropriate). The *Younger* abstention doctrine allows abstention by federal courts even if jurisdiction is properly asserted when the relief that is sought would interfere with state processes. *Id.* This relates to the justification of the *Younger* abstention doctrine by arguing that a federal court's decision to abstain serves the interests of federalism without diminishing a claimant's ability to seek relief. *Id.*

47. *See* Cantor v. Cohen, 442 F.3d 196, 208 (4th Cir. 2006) (arguing clarity of ICARA's remedies provision). In his dissent, Judge Traxler argued that ICARA's judicial remedies provision gave federal courts concurrent jurisdiction over claims regarding the rights under the Hague Convention. *Id.* Judge Traxler pointed out that ICARA does not distinguish between state and federal courts concerning the appropriate forum to establish a parent's access rights. *Id.* at 211. He articulates that "even assuming for analytical purposes that the Hague Convention itself does not afford the noncustodial parent a judicial forum to enforce his rights to access, Congress nevertheless has done

family relations, ICARA claims show that family relations is also a federal interest, which is the exact purpose of the enactment of ICARA.[48]

In *Dawson v. Dylla*, the Tenth Circuit faced whether federal courts may exercise jurisdiction over access claims arising under ICARA. Instead of addressing the issue, the Court declared the district court should have abstained from hearing the matter at all. By disallowing the federal district court from entertaining the issue, the Court passively handed over complete jurisdiction of ICARA access claims to state courts, dismissing the opportunity to weigh in on the split authority surrounding this issue. By treating Dawson's claim as a foreign issue that federal courts have no jurisdiction over, the Court missed the opportunity to clarify and interpret Congress's intent for ICARA. Finally, by incorrectly applying the *Younger* abstention elements, the Court disregarded how family matters may be ongoing for several years due to the intricacies of divorce and child custody issues. Therefore, the Tenth Circuit improperly held that Dawson's ICARA claim cannot be adjudicated in federal courts, and as a result, Dawson does not have access rights to his child.

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so." *Id.* at 210. *See also* Adler, *supra* note 26, at 197 (analyzing tensions between federalism and family matters). Family law is "pragmatically suited to state control." *Id.* at 198. Even though Congress and the agencies empowered by the executive branch manage family matters through a broad range of statutory and regulatory schemes. *Id.* These schemes include but are not limited to taxation, immigration, and employment benefits. *Id. See also* Hazzikostas, *supra* note 25, at 436 (explaining how state courts can hear ICARA claims). Nothing prevents a left-behind parent from waiting until a late stage of the state proceeding to bring her ICARA claim in state court. *Id.*

48. *See* Fozouni, *supra* note 16, at 196 (articulating purpose of ICARA). Congress passed ICARA "to establish procedures for the implementation of the Convention in the United States." *Id. See also* Metz, *supra* note 14, at 1952 (explaining circular reasoning behind *Younger* abstention's first element). "State interests are not served when, as with ICARA, the federal claim is specifically designed to have the effect of interrupting a state process." *Id.*