

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

REPUBLIC OF PANAMA,)
Petitioner,)
v.) Civil Action No.
OMEGA ENGINEERING LLC and)
OSCAR RIVERA,)
Respondents.)

**MEMORANDUM OF LAW IN SUPPORT OF PANAMA’S PETITION
TO RECOGNIZE AND ENFORCE ICSID ARBITRATION AWARD**

The Republic of Panama (“Panama” or “Petitioner”) submits this memorandum of law in support of its Petition to recognize and enforce an arbitration award unanimously issued in its favor by an arbitral tribunal convened pursuant to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“ICSID Convention”) (hereinafter, “Petition”) (D.E. 1). Legislation adopted by Congress in conjunction with the ratification of the ICSID Convention by the United States provides that awards rendered by the International Centre for Settlement of Investment Disputes (“ICSID”), the body that administers arbitrations commenced under the ICSID Convention “shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.” 22 U.S.C. § 1650a(a).

FACTUAL BACKGROUND

The relevant facts are simple: Panama is a sovereign state and a Contracting State of the ICSID Convention.¹ Respondent Oscar Rivera (“Rivera”) is a national of the United States, resident in Miami, and the owner of Respondent Omega Engineering LLC (“Omega”). Omega is a company incorporated in Puerto Rico.

The Respondents commenced an arbitration against Panama pursuant to: (1) the Treaty between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investment, signed on October 27, 1982 and which entered into force on May 30, 1999 (the “BIT”); (2) the United States-Panama Trade Promotion Agreement signed on June 28, 2007, which entered into force on October 31, 2012 (the “TPA”); and (3) the ICSID Convention. The arbitration was submitted to ICSID and registered by the ICSID Secretariat on December 30, 2016. *Omega Engineering LLC and Oscar Rivera v. Republic of Panama*, ICSID Case No. ARB/16/42.

In their request for arbitration, the Respondents asserted that Panama had improperly terminated multiple project contracts Omega had with Panama, failed to pay invoices, failed to issue permits, and wrongfully initiated a criminal investigation of Rivera. *See Omega Engineering LLC and Oscar Rivera v. Republic of Panama*, ICSID Case No. ARB/16/42, Final Award, ¶¶ 5, 128-164 (Oct. 14, 2022). (A certified copy of the Final Award, as redacted by party agreement, is annexed as **Exhibit 1** to Panama’s Petition.) Panama denied all these claims. *Id.* ¶¶ 165-180.

¹ Panama signed the ICSID Convention on November 22, 1995 and it was ratified by Panama’s National Assembly on April 8, 1996. It entered into force with respect to Panama on May 8, 1996. *See* <https://icsid.worldbank.org/about/member-states/database-of-member-states> (last visited on March 14, 2024).

Thereafter a tribunal was constituted, in accordance with Article 37(2)(a) of the ICSID Convention, composed of Mr. Laurence Shore (who served as the tribunal's President), Dr. Horacio Grigera Naón (appointed by the Respondents), and Professor Zachary Douglas KC (appointed by Panama). The tribunal was deemed to be constituted on May 1, 2017. *Id.* ¶¶ 18-20. The parties then engaged in document production and filed a series of memorials, witness statements, and expert reports in support of their respective cases. *See generally id.* ¶¶ 16-101.

An evidentiary hearing before the tribunal was held in Washington, D.C., from February 24 through February 28, 2020, at which witnesses and experts testified on behalf of both sides. *Id.* ¶¶ 77-78. That hearing was then continued by videoconference from October 13 through October 16, 2020, at which additional witnesses and experts testified. *Id.* ¶¶ 92-93. The tribunal declared the arbitral proceeding closed on September 28, 2022. *Id.* ¶ 101.

The tribunal issued its unanimous Final Award on October 14, 2022, in which it dismissed all of the Respondents' claims. *Id.* ¶¶ 389-405. The tribunal further awarded Panama "a significant percentage of its costs in successfully defending the case brought against it," in the amount of US\$ 4,840,086.78. *Id.* ¶¶ 420, 424-426.

The Respondents did not seek to have the tribunal's Final Award rectified, interpreted, revised, or annulled pursuant to the ICSID Convention, and the time for doing so has expired. *See* ICSID Convention, arts. 50-52; ICSID Rules of Procedure for Arbitration Proceedings (2006), Rules 49-50.

The Respondents have not paid Panama any portion of the tribunal's award in Panama's favor.

ARGUMENT

**THE COURT SHOULD GRANT PANAMA'S PETITION
AND ENFORCE ITS ICSID AWARD**

Article 54(1) of the ICSID Convention, to which the United States is a Contracting State, provides:

Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

The United States, in connection with ratification of the ICSID Convention, adopted implementing legislation.² 22 U.S.C. § 1650a. Section 1650a(a) thereof provides:

An award of an arbitral tribunal rendered pursuant to chapter IV of the [ICSID] convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the convention.

Id. (emphasis added).

Then, Section 1650a(b) provides:

The district courts of the United States ... shall have exclusive jurisdiction over actions and proceedings under subsection (a) of this section, regardless of the amount in controversy.

² The United States signed the ICSID Convention on August 27, 1965 and Congress ratified it on June 10, 1966. The Convention entered into force with respect to the United States on October 14, 1966. See <https://icsid.worldbank.org/about/member-states/database-of-member-states> (last visited on March 14, 2024).

Id.; see also 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).³

Accordingly, ICSID awards are entitled to automatic recognition and enforcement in the federal district courts of the United States. Here, the Respondents’ US \$4.8 million pecuniary obligation under the Final Award “shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.” Final Award ¶¶ 420, 424-426; 22 U.S.C. § 1650a(a).

This court has previously considered a nearly identical petition in *Oriental Republic of Uruguay v. Italba Corp.*, 606 F. Supp. 3d 1250 (S.D. Fla. 2022).⁴ There, Uruguay had entirely defeated an ICSID claim against it and had obtained a US\$ 5.8 million award of its fees. *Id.* at 1255-56. The court, in analyzing its role, concluded:

At bottom, the Court’s role in actions brought pursuant to Section 1650a to enforce ICSID awards is very limited. This Court will not examine the award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award.

Id. at 1255; see also *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 117-118 (2d Cir. 2017). The district court went on to say that its role was confined to assessing the following very limited questions:

The Court must ensure that it has subject-matter and personal jurisdiction, must ensure that the award is authentic, and must ensure that its enforcement order is consistent with the award.

Italba Corp., 606 F.Supp.3d at 1255.

³ As Rivera resides in Miami, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3).

⁴ Panama previously obtained enforcement of a fee award in another ICSID arbitration it won in the Middle District of Florida. *Republic of Panama v. Jaime Jurado and Nations Energy Corp.*, Case No. 8:12-cv-1647-T-17MAP (M.D. Fla. June 14, 2013).

Here, none of those issues can be in doubt. This Court has subject-matter jurisdiction via Section 1650a and has personal jurisdiction via Rivera's Miami residence and Omega's Puerto Rico incorporation. The Final Award, which bears the certification of ICSID's Secretary-General, is indisputably authentic, and the order and judgment Panama seeks is wholly consistent with the Final Award. There cannot be any real dispute that would prevent the immediate recognition and enforcement of the Final Award by this Court.

CONCLUSION

Panama respectfully requests that the Court grant its Petition and enter judgment against both Respondents recognizing and enforcing the Final Award and awarding Panama US \$4,840,086.78 plus post-judgment interest and the costs of this action, together with such other relief as this Court may deem just and proper.

Dated: March 21, 2024

Respectfully submitted,

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