

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

FILED

BS

99-53-1 FILED 4:27

-----  
IN RE: Letter Rogatory Request from )  
Republic of Poland Ministry of Justice )  
for Assistance in the Criminal )  
Matter of Alexei Bragontchouk )  
-----

No. 99-53-MISC-T-17B

APPLICATION FOR ORDER PURSUANT TO  
TITLE 28, UNITED STATES CODE, SECTION 1782

The United States of America petitions this Court for an Order pursuant to 28 U.S.C. 1782 and its own inherent authority appointing DONALD L. HANSEN as Commissioner to collect evidence from witnesses within the jurisdiction of this Court and to take such other action as is required to execute the attached request made by the Republic of Poland Ministry of Justice.

Respectfully submitted,

CHARLES R. WILSON  
UNITED STATES ATTORNEY

By:   
DONALD L. HANSEN  
Assistant United States Attorney

|

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

99-53-1 Filed 4:20

IN RE: SEALED PROCEEDINGS :

:  
:  
:  
:  
:  
:  
:

CASE NO. 99-53-MISC-T-17B

**MOTION TO SEAL SUPPORTING DOCUMENTATION**

COMES NOW the United States of America, by and through the undersigned Assistant United States Attorney, and moves this Court to seal the supporting documentation received from the Republic of Poland, which is attached as part of the Government's Application for Order pursuant to Title 28, United States Code, Section 1782.

The sealing of this documentation is requested in order to safeguard from public scrutiny certain sensitive information which would come to light were the documentation become public knowledge either by way of reports published in the media, or otherwise.

Respectfully submitted,

CHARLES R. WILSON  
United States Attorney

By: 

DONALD L. HANSEN  
Assistant United States Attorney  
USAO No. 060  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602-3996  
Telephone: (813) 274-6351  
Facsimile: (813) 274-6178

FILED *Bl*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

JUL 1 1999

Time

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

-----  
IN RE: Letter Rogatory Request from )  
Republic of Poland Ministry of Justice )  
for Assistance in the Criminal )  
Matter of Alexei Bragontchouk )  
-----

No. 99-53-MISC-T-17B

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR ORDER

This memorandum is submitted in support of the application of the United States for an order requiring persons within the jurisdiction of this Court to provide testimony and evidence requested by the Republic of Poland Ministry of Justice for use in a criminal proceeding in Poland and appointing a commissioner to collect it. The application is based upon the attached letter rogatory request.

As set forth in the letter rogatory request, the Republic of Poland Ministry of Justice has commenced a criminal investigation in Poland. [(1) summarize relevant facts; (2) indicate relevant offenses; (3) state need for, and the relevance and intended uses of, the assistance requested in view of facts and offenses set forth].

This Court, pursuant to its statutory and inherent authority, may (1) order that persons within this district shall provide the evidence requested for use in a proceeding in a foreign country, (2) appoint a person to gather such evidence, and (3) establish the procedure pursuant to which the evidence requested shall be produced.

1. Authority to grant a foreign request for assistance

Title 28, Section 1782, provides in pertinent part that:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign . . . tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign . . . tribunal or upon the application of any interested person . . . .

Section 1782 was enacted:

. . . to improve United States judicial procedures for . . . obtaining evidence in the United States in connection with proceedings before foreign and international tribunals . . . .

Sen. Rep. No. 1580, 88th Cong., 2d Sess. 1 (1964), reprinted in 1964 U.S. Code Cong. & Admin. News 3782 [hereinafter 1964 U.S.C.C.A.N.]. By enacting Section 1782, Congress reaffirmed the inherent authority of district courts to grant foreign judicial assistance. In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, 648 F. Supp. 464 (S.D.Fla. 1986), aff'd, 848 F.2d 1151, 1154 (11th Cir. 1988), cert. denied, 488 U.S. 1005 (1989) [hereinafter Trinidad and Tobago]. More significantly, its enactment reflected Congress' desire to **increase** the power of district courts to respond to foreign requests for judicial assistance. In re Letters Rogatory from the Tokyo District, Tokyo, Japan, 539 F.2d 1216, 1218 (9th Cir. 1976) [hereinafter Japan I]. In sum, Section 1782 is a Congressional invitation to district courts to affirmatively act to execute foreign requests for judicial assistance.

a. Source of the foreign request for assistance

Foreign requests for judicial assistance may be made by a foreign court or tribunal, including an investigating magistrate or juge d'instruction. In re Letter of Request from the Government of France, 139 F.R.D. 588, 590-591 (S.D.N.Y. 1991) [hereinafter France]; In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-Au-Prince, Republic of Haiti, 669 F. Supp. 403, 405-406 (S.D.Fla. 1987) [hereinafter Haiti]. Foreign requests may also be made by "any interested person," such as a foreign legal affairs minister or public prosecutor. In re: Letters Rogatory from the Tokyo District Prosecutor's Office, Tokyo, Japan, 16 F.3d 1016 (9th Cir. 1994) [hereinafter Japan II]; In re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 690 (D.C. Cir. 1989) [hereinafter United Kingdom]; Trinidad and Tobago, 648 F.Supp. at 466-67.

b. Purpose for the foreign request for assistance

Foreign requests for judicial assistance must be for the purpose of securing evidence "for use in a proceeding in a foreign . . . tribunal." This includes evidence needed in proceedings before investigating magistrates as well as in proceedings before conventional courts. 1964 U.S.C.C.A.N. at 3788; Haiti, 669 F. Supp at 405-406. Section 1782 contemplates that district courts will facilitate evidence gathering prior to litigation; Congress amended Section 1782 to eliminate the need for a "pending" proceeding with the intention of expanding the availability of U.S. judicial procedures for obtaining evidence in the United States in connection with proceedings before foreign tribunals. Even so, where no proceeding before a foreign tribunal is currently pending,

district courts should consider whether a proceeding can reasonably be expected to commence. As Judge (now Justice) Ginsburg explained:

[T]o guard against abuse of section 1782, the district court must insist on reliable indications of the likelihood that proceedings will be instituted within a reasonable time.

United Kingdom, 870 F.2d at 692.

## 2. Authority to appoint a commissioner

Section 1782 further provides in pertinent part that:

The district court . . . may direct that the testimony or statement [of a person who resides or is found within the district] be given or the document or other thing be produced, before a person appointed by the court.

A district court customarily appoints or "commissions" a person ("commissioner") to collect evidence on behalf of the district court and authorizes the commissioner to submit the evidence collected to the requesting foreign court or authority. With requests for assistance in criminal matters, a district court typically appoints an Assistant United States Attorney as commissioner. However, a district court also may commission a foreign authority together with (or in lieu of) an Assistant United States Attorney. See, e.g., In re Letter of Request from the Supreme Court of Hong Kong, 138 F.R.D. 27, 29 (S.D.N.Y. 1991) [hereinafter Hong Kong].

Application to a district court for appointment of a commissioner to execute a foreign request for judicial assistance is handled ex parte. United Kingdom, 870 F.2d at 688; Japan I, 539 F.2d at 1219.

### 3. Authority to establish the evidence-collecting procedure

Section 1782 further provides in pertinent part that:

To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A district court empowers a commissioner to collect the evidence using the procedure prescribed by the court. A district court has "complete discretion in prescribing the procedure to be followed." 1964 U.S.C.C.A.N. at 3789. When a district court's order fails to specify a procedure by which a commissioner is to collect the evidence, the Federal Rules of Civil Procedure apply. Japan II, 16 F.3d 1016; Hong Kong, 138 F.R.D. at 32. However, as Section 1782 makes clear, when a district court does specify a procedure other than one in accordance with the Federal Rules of Civil Procedure, the alternative procedure shall apply. France, 139 F.R.D. at 590-591.

#### a. Commissioner's subpoena

If a district court so orders, a commissioner may use the attached form, entitled commissioner's subpoena, to obtain the requested evidence. See, e.g., United States v. Erato, 2 F.3d 11, 12-13 (2d Cir. 1993) (incorporating in pertinent part the district court's order directing the use of commissioner's subpoenas). The commissioner's subpoena is a creation of neither the Federal Rules of Criminal Procedure nor the Federal Rules of Civil Procedure, but is an order of the district court for the production of evidence in accordance with Section 1782. See 28 U.S.C. 1651. Upon authorization by a district court, a commissioner may issue such commissioner's subpoenas as are

necessary to execute the request in the relevant district.

b. Notice of evidence taking

If a district court so orders, a commissioner may collect the evidence in accordance with procedures -- including those involving notice -- requested by the requesting court or authority. In the absence of a request for a specific procedure, a district court can assume that the requesting court or authority has provided such notice as the foreign law requires, or that the foreign law does not require notice and the requesting court or authority does not consider notice to be necessary or useful. In sum, if the requesting state has not requested notice, no notice need be provided. Accordingly, to the extent that a request does not ask for specific notice procedures, a district court should authorize a commissioner to take the evidence without notice to any party other than the recipient of the commissioner's subpoena.

4. The Present Request

Based upon the facts set forth in the letter rogatory request from the Republic of Poland Ministry of Justice, the request is clearly one contemplated by Congress when, in enacting Section 1782, it expanded the authority of federal courts to assist foreign tribunals. This request relates to a criminal investigation being conducted by the Provincial Prosecutor's Office in Warsaw, Poland, Organized Crime Department, of a Moldavian citizen, Alexei Bragontchouk, and others for the laundering of millions of U.S. dollars that are believed to be proceeds of illegal weapons trafficking. This investigation has identified a number of the significant targets of this investigation and has requested the assistance of the United States to track down the connections

bearing on this money laundering scheme which are found in this country. There is every indication that this investigation will lead to a judicial proceeding in Poland.

Congress intended that the United States set an example to other nations by making judicial assistance generously available. Trinidad and Tobago, 848 F.2d at 1153-54. Accordingly, the government asks this Court, in the interests of comity, to issue the attached order under Section 1782 granting assistance for a proceeding in the Republic of Poland, appointing Assistant United States Attorney DONALD L. HANSEN as commissioner, and authorizing him to take the actions necessary, including the issuance of commissioner's subpoenas, to collect the evidence requested and to adopt such procedures in the receipt of the evidence as are consistent with the intended use thereof in the Republic of Poland.

Respectfully submitted,

CHARLES R. WILSON  
UNITED STATES ATTORNEY



DONALD L. HANSEN  
Assistant United States Attorney  
USAO No. 060  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone No.: 813/274-6351  
Facsimile No.: 813/274-6178

FILED

UM

01 JUN 20 PM 3:48

CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

IN RE: Letter Rogatory Request from )  
Republic of Poland Ministry of Justice ) No. 99-53-MISC-T-17B  
for Assistance in the Criminal )  
Matter of Alexei Bragontchouk )

NOTICE OF COMPLETION OF COMMISSION

I, DONALD L. HANSEN, Assistant United States Attorney for the Middle District of Florida, having been appointed Commissioner by Order of this Court filed on July 29, 1999, for the purpose of taking evidence in accordance with the request of the Republic of Poland notify the Court that I have completed the requirements of such appointment to the extent possible.

Respectfully submitted,

MAC CAULEY  
UNITED STATES ATTORNEY

By: 

DONALD L. HANSEN  
Assistant United States Attorney  
USAO No. 060  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602-3996  
Telephone: (813) 274-6351  
Facsimile: (813) 274-6178

cc: Office of International Affairs  
Post Office Box 27330  
Washington, D.C. 20038-7330