

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

**IN RE: Letter Rogatory from Costa Rica
by the Supreme Justice Court
for Assistance in the Criminal
Matter of David William Counter**

**APPLICATION FOR ORDER PURSUANT TO
TITLE 18, UNITED STATES CODE, SECTION 3512**

The United States of America petitions this Court for an order pursuant to 18 U.S.C. § 3512 and the Court's inherent authority appointing Monique Botero (or a substitute or successor subsequently designated by the Office of the United States Attorney) as commissioner to collect evidence from witnesses and to take such other action as is necessary to execute the above-captioned and attached request from Costa Rica by the Supreme Justice Court.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: /s/ Monique Botero
MONIQUE BOTERO
Assistant United States Attorney
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p>	<p>DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Re-filed- (see VI below)	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. RELATED/RE-FILED CASE(S).

(See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD _____ DATE _____

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

(d) Choose one County where Action Arose.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States District Courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

**IN RE: Letter Rogatory from Costa Rica
by the Supreme Justice Court
for Assistance in the Criminal
Matter of David William Counter**

CIVIL COVER SHEET

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003? ____ Yes x No
2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007? ____ Yes x No

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

**IN RE: Letter Rogatory from Costa Rica
by the Supreme Justice Court
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MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR ORDER

The United States is seeking an order appointing a person as a commissioner to collect evidence requested by Costa Rica in its attached letter rogatory of request [the "Request"] and to seek other orders, as needed, to execute the request as authorized by 18 U.S.C. § 3512.

As set forth in the Request, the Costa Rican Republic General Attorney Office has commenced a criminal investigation. Specifically, the Costa Rican authority is investigating the alleged murder of David William Counter. On December 27, 2006, David William Counter (Counter) and his son were visiting Costa Rica in connection with a cruise on the ship *M/S Carnival Liberty*. That same day, at approximately 11:30 a.m., Counter was shot in the abdomen during an attempted robbery at Vargas Park in Limon, Costa Rica. Costa Rican authorities interviewed two witnesses in connection with the case. Jose Rosales Arrieta reported that he saw the victim struggle with his attacker, and also saw the victim fall to the ground after he was shot. The second witness, Elizabeth García Rosales, reported that she heard a shot, turned around and saw a wounded foreigner on the ground. García Rosales also reported that she ran behind the attacker to keep him in sight.

Costa Rican authorities later arrested Davis Vargas Retana on suspicion of being the attacker. Vargas Retana was in possession of a handgun when he was detained. Ballistics tests revealed that the bullet which struck the victim was fired by the gun confiscated by Costa Rican authorities from the suspected attacker. The victim and the witnesses gave descriptions of the attacker's clothing and physical characteristics, which were similar to the description of the man detained by Costa Rican authorities shortly after the attack. Davis Vargas Retana is charged with attempted homicide, in violation of Articles 24 and 191 of the Costa Rican Penal Code.

Subsequent to the issuance of the Letter Rogatory, Costa Rican authorities provided additional information suggesting that Counter is a Canadian citizen. Costa Rican authorities likewise stated that after the shooting, Counter returned immediately to the *Liberty* to receive medical attention, and was treated aboard the *Liberty* by South African citizen Dr. Neil Frederick Barnard, a member of the ship's medical crew.

Based on the above and the established severity of the injuries suffered by Counter in the attack, Costa Rican authorities seek the following information from Carnival Cruise Lines, which is headquartered in Miami, Florida, for use in their investigation: 1) a copy of Dr. Neil Frederick Barnard's medical licence; and 2) a copy of the medical report describing the extent and nature of the victim's injuries.

Federal courts, pursuant to statutory and their inherent authority, may issue orders as may be necessary for the production of the evidence requested by the Supreme Justice Court, including orders appointing a person as commissioner to gather such evidence and establishing the procedures for the production of such evidence.

A. Statutory Authority Grounding Execution of Requests for Assistance

In the past, federal courts routinely utilized procedures authorized by 28 U.S.C. § 1782 (the “commissioner” process) to execute requests for assistance from foreign authorities. In re Commissioner's Subpoenas, 325 F.3d 1287, 1305-1306 (11th Cir. 2003). Substantive U.S. law regarding searches, seizures and other compulsory processes further grounded the execution of such requests.

On October 19, 2009, the President signed the Foreign Evidence Request Efficiency Act of 2009 (Public Law 111-79), enacting 18 U.S.C. § 3512, the full text of which is attached for the convenience of this Court. Section 3512 explicitly authorizes a federal court to:

issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing, and restitution.

Section 3512 directly empowers the federal courts to execute such requests and separately codifies under Title 18 the longstanding practice and procedures employed by the United States and the federal courts to execute requests by foreign authorities for assistance to the fullest extent possible under U.S. law. Congress enacted Section 3512 to make it “easier for the United States to respond to these requests by allowing them to be centralized and by putting the process for handling them within a clear statutory scheme.” 155 CONG. REC. S6,810 (2009)(Statement of Sen. Whitehouse).

B. Execution of Foreign Requests for Assistance Under Section 3512.

1. Authorization of the Application to This Court

Section 3512 provides:

Upon application, duly authorized by an appropriate official of the Department of Justice, of an Attorney for the Government, a Federal judge may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation and prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing and restitution.

For purposes of Section 3512, an application is “duly authorized by an appropriate official of the Department of Justice” when the Department of Justice, Criminal Division, Office of International Affairs, has reviewed and authorized the request and is executing the request itself or has delegated the execution to another attorney for the government. In this matter, such authorization and delegation is evidenced by a letter dated November 12, 2010 from the Department of Justice, Criminal Division, Office of International Affairs, received by the United States Attorney, transmitting the Request to this district for execution.

Section 3512 authorizes filing the instant application in this district where the majority (or all) of the evidence is located.

2. Foreign Authority Seeking Assistance Within Section 3512.

As to the “foreign authority” making the Request, Section 3512 provides:

The term "foreign authority" means a foreign judicial authority, a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters.

In this matter the Judge of Limon's Criminal Judge Court by the intervention of Costa Rica's Supreme Justice Court and Costa Rica's Republic General Attorney Office in Limon City, Costa Rica.

Historically, 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); 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). The language of Section 3512 clearly encompasses those entities and persons within the meaning of "foreign authority" as well as those persons traditionally deemed an "interested person," such as a foreign public prosecutor. In re Letters Rogatory from the Tokyo District Prosecutor's Office, Tokyo, Japan, 16 F.3d 1016, 1019 (9th Cir. 1994); In re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 690 (D.C. Cir. 1989); In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, 648 F. Supp. 464, 466 (S.D. Fla. 1986), aff'd, 848 F.2d 1151, 1154 (11th Cir. 1988), cert. denied, 488 U.S. 1005 (1989).

As evidenced by the Request itself and confirmed in the authorization process and again by the undersigned, consistent with Section 3512(a)(1), the foreign authority seeks assistance in the investigation or prosecution of criminal offenses or in proceedings related to the prosecution of criminal offenses.

3. Authority of the Federal Courts Under Section 3512

When enacting Section 3512, Congress intended that federal courts facilitate to the fullest extent possible the execution of requests by foreign authorities for assistance in criminal matters and endeavored to streamline and expedite the execution of such requests. Section 3512 authorizes federal courts to issue “such orders as may be necessary to execute a request” and specifically includes: orders for search warrants pursuant to Federal Rule of Criminal Procedure 41; orders for stored wire or electronic communications and related evidence under 18 U.S.C. § 2703; orders for pen registers and trap and trace devices under 18 U.S.C. § 3123; orders for the provision of testimony or a statement or the production of documents or other things, or both; and orders appointing “a person” to direct the taking of testimony or statements or the production of documents or other things, or both. 18 U.S.C. § 3512(a)(1), (2).

The assistance requested by the Supreme Justice Court in the instant Request falls squarely within that contemplated by Section 3512.

C. Appointment of a Person as Commissioner to Collect Evidence

1. Statutory Authorization.

Section 3512 (b) provides that a federal judge may “issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both.” The statute further authorizes the person appointed to issue orders requiring the appearance of a person, or the production of documents or other things, or both; administer any necessary oath; and take testimony or statements and receive documents or other things. Commensurate with past practice under 28 U.S.C. § 1782, it is anticipated that a federal court would appoint an Attorney for the Government, typically a federal prosecutor, as “commissioner.”

2. Procedures for Evidence Collection

Section 3512(a) specifically empowers a federal judge to issue “such orders as may be necessary” to execute the request. This authorization encompasses orders specifying the procedures to be used to collect particular evidence, including procedures requested by the foreign authority to facilitate its later use of the evidence. Nothing in Section 3512 suggests any limitation on a court’s power to exercise "complete discretion in prescribing the procedure to be followed" as was available under 28 U.S.C. § 1782. In re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 693 (D.C. Cir. 1989), citing 1964 U.S.C.C.A.N. at 3789. See White v. National Football League, et al., 41 F.3d 402, 409 (8th Cir. 1994), cert. denied, 515 U.S. 1137 (1995) (a court may issue whatever process it deems necessary to facilitate disposition of a matter before it); FED.R.CRIM.P. 57(b).

a. Procedures Authorized by Other Statutes.

In addition, Section 3512 references specific U.S. laws for obtaining certain evidence and, by doing so, adopts any statutorily mandated procedures in relation to obtaining orders for search warrants; orders for contents of stored wire or electronic communications or for records related thereto; and orders for a pen register or a trap and trace device.

b. Orders by the Person Appointed; Commissioner Subpoenas

Section 3512 authorizes the “person” appointed (here and in past practice under 28 U.S.C. § 1782, the “commissioner”) to issue orders “requiring the appearance of a person, or the production of documents or other things or both.” A district court has "complete discretion in prescribing the procedure to be followed."

If a federal district court so orders, the commissioner may use the attached form, still entitled "commissioner's subpoena," to obtain the requested evidence. See In re: Commissioner's Subpoenas, 325 F.3d 1287, 1291 (2d Cir. 1993) (incorporating in pertinent part a district court's order directing use of commissioner's subpoenas); United States v. Erato, 2 F.3d 11, 13-14 (2d Cir. 1993) (same). This commissioner's subpoena is simply a version of the "order" to be issued by the person appointed by the court under Section 3512 to direct the production of evidence. Section 3512 expressly authorizes the service and enforcement of such orders or commissioner's subpoenas anywhere in the United States (i.e., coextensive with the service of subpoenas in U.S. criminal investigations and prosecutions).

c. Notice of Evidence Taking

As an initial matter, this application is being made ex parte, consistent with U.S. practice in its domestic criminal matters and its prior practice on behalf of foreign authorities under 28 U.S.C. § 1782. In re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 688 (D.C. Cir. 1989); In re Letters Rogatory from the Tokyo District, Tokyo, Japan, 539 F.2d 1216, 1219 (9th Cir. 1976).

Section 3512 authorizes use of compulsory process in the execution of foreign assistance requests comparable or similar to that used in domestic criminal investigations or prosecutions. Because subpoenas utilized in U.S. criminal proceedings (i.e., grand jury and criminal trial subpoenas) are issued without notice to any party other than the recipients (i.e., no notice to targets or defendants), orders and commissioner's subpoenas issued in execution of foreign assistance requests pursuant to Section 3512 likewise should require no notice other than to the recipients. In the absence of a specific request to provide notice, a district court and U.S. authorities can assume that a requesting foreign authority has provided such notice as the foreign law requires, or that

foreign law does not require notice and the requesting foreign authority does not consider notice to be necessary or useful. Accordingly, a federal district court should authorize a commissioner to collect the evidence requested without notice to any party other than the recipient of the commissioner's subpoena except to the extent that a request asks for specific notice procedures.

d. Right to Financial Privacy Act

The Right to Financial Privacy Act, 12 U.S.C. §§ 3401 et seq., does not apply to execution of foreign legal assistance requests. Young v. U.S. Dept. of Justice, 882 F.2d 633, 639 (2d Cir. 1989), cert. denied, 493 U.S. 1072 (1990); In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-Au-Prince, Republic of Haiti, 669 F. Supp. 403, 407 (S.D. Fla. 1987); In re Letters of Request from the Supreme Court of Hong Kong, 821 F.Supp. 204, 211 (S.D.N.Y. 1993). Consequently, to the extent that execution of a request entails production of bank or financial records, notice provisions of the Act do not apply, and the Commissioner need not give, nor arrange for the custodian of records to give, notice to an account holder. (Note that the Act itself applies only to accounts maintained in a person's name and not to corporate, perhaps even partnership, accounts. United States v. Daccarett, 6 F.3d 37, 50-52 (2d Cir. 1993).)

Conclusion

The instant request is exactly the type of request contemplated for execution under Section 3512. In its sequential legislative efforts relevant to the provision of assistance to foreign authorities, Congress has intended that the United States set an example to other nations by making judicial assistance generously available. See, e.g., In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, 848 F.2d 1151, 1153-1154 (11th Cir. 1988), cert. denied, 488 U.S. 1005 (1989). Section 3512 enables the United States to respond “more quickly . . . to foreign evidence requests. These efforts will assist [the United States] with [its] investigations as foreign

authorities will be urged to respond in kind to our evidence requests in a speedy manner.” 155
CONG. REC. H10,093 (2009)(Statement of Rep. Schiff).

Accordingly, to execute this Request and in the interests of comity, the Government moves this Court to issue the attached order pursuant to 18 U.S.C. § 3512 appointing the undersigned Assistant U.S. Attorney as commissioner, authorizing the undersigned to take the actions necessary, including the issuance of commissioner's subpoenas, to obtain the evidence requested, to adopt such procedures in receipt of the evidence as are consistent with the intended use thereof, and sealing the application and order until further order of this Court.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: /s/ Monique Botero
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

**IN RE: Letter Rogatory from Costa Rica
by the Supreme Justice Court
for Assistance in the Criminal
Matter of David William Counter**

ORDER APPOINTING A COMMISSIONER

Upon application of the United States, and upon review of the letter rogatory of request [the “Request”] of November 12, 2010 from Supreme Justice Court seeking evidence for use in a criminal investigation in Costa Rica, and the Court having fully considered this matter,

IT IS HEREBY ORDERED, pursuant to the authority conferred by the Treaty and 18 U.S.C. § 3512, as well as this Court’s inherent authority, that Monique Botero (or a substitute or successor designated by the Office of the United States Attorney) is appointed as commissioner (the “commissioner”) of this Court and hereby directed to execute the Treaty Request and to take such steps as are necessary to collect the evidence requested. In doing so, the commissioner:

1. May issue commissioner’s subpoenas to be served at any place within the United States on persons (natural and legal) ordering them or their representatives to appear and to testify and produce evidence located within the United States;

2. Shall provide notice with respect to the collection of evidence to those persons identified in the Request as parties to whom notice should be given (and no notice to any other party shall be required);

3. Shall adopt procedures to collect the evidence requested consistent with its use in the investigation, prosecution or other proceeding in Costa Rica for which the Attorney General has requested assistance, which procedures may be specified in the Request or provided by or with the approval of the Costa Rican Central Authority under the Treaty;

4. May, in collecting the evidence requested, be accompanied by persons whose presence or participation is authorized by the commissioner, including, without limitation, federal law enforcement agents and/or representatives of Costa Rica who, as authorized or directed by the commissioner, may direct questions to any witness;

5. May seek such further orders of this Court as may be necessary to execute this Request, including orders to show cause why persons served with commissioner's subpoenas who fail to produce evidence should not be held in contempt, and including protective orders to regulate the use of the evidence collected;

6. Shall certify and submit the evidence collected to the Office of International Affairs, Criminal Division, U.S. Department of Justice, or as otherwise directed by that Office for transmission to Costa Rica; and,

7. May provide copies of the evidence collected to persons identified in the Request as parties to whom such copies should be given (and to no other persons).

IT IS FURTHER ORDERED that any person from whom the commissioner seeks to collect evidence may, for good cause shown, oppose the giving of evidence, or the circumstances thereof, by motion timely filed with this Court, a copy of which shall be provided contemporaneously to the commissioner.

UNITED STATES DISTRICT JUDGE

Dated: _____, 2011

cc: Monique Botero, AUSA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

**IN RE: Letter Rogatory from Costa Rica
by the Supreme Justice Court
for Assistance in the Criminal
Matter of David William Counter**

COMMISSIONER'S SUBPOENA

TO: _____

I, Monique Botero, an Assistant United States Attorney for the Southern District of Florida, acting pursuant to 18 U.S.C. § 3512, and this Court's order hereunder dated _____, for the purpose of rendering assistance to Costa Rica, command that you appear before me in Room 600, in the James Lawrence King Federal Building located at 99 N.E. 4th Street, Miami, Florida, on _____, 2011, at ____ a.m. to provide testimony/documents regarding alleged violation of the laws of the Costa Rica, namely, attempted homicide, among other alleged violations, and that at the time and place aforesaid you provide the following:

For failure to attend and provide testimony/said documents, you may be deemed guilty of contempt and liable to penalties under the law.

Dated:

COMMISSIONER MONIQUE BOTERO
Assistant United States Attorney for the
Southern District of Florida
Telephone No. (305)961-9427

Ciudad de Limón, Costa Rica, 19 de abril del 2010

Licenciada
Silvia Navarro Romanini
Secretaria General
Secretaría General de la Corte Suprema de Justicia
Poder Judicial de Costa Rica

S. D.

Estimada Licenciada:

Quien suscribe, Lic. Arnoldo Samudio Samudio, en mi condición de Juez Penal de Limón, atento manifiesto:

A fin que se le otorgue el trámite correspondiente, adjunto le remito CARTA ROGATORIA, con el fin que por medio de las vías correspondientes Ministerio de Relaciones Exteriores y Culto de Costa Rica, Departamento de Justicia del Gobierno de los Estados Unidos de América, se sirvan hacerla llegar a las autoridades judiciales competentes en los Estados Unidos de América.

Adjunto cinco copias de la orden, así como traducción oficial al idioma inglés.

Cualquier información adicional o aclaración, favor requerirla al Juzgado Penal de Limón, al teléfono 22799-1402 / fax 2799-1333.

Atentamente,

Lic. Arnoldo Samudio Samudio
Juez Penal de Limón

CARTA ROGATORIA

**LICENCIADO ARNOLDO SAMUDIO SAMUDIO
JUZGADO PENAL DE LIMÓN
POR INTERMEDIO DE LA SECRETARÍA DE LA CORTE SUPREMA DE
JUSTICIA DE COSTA RICA, EL MINISTERIO DE RELACIONES EXTERIORES
Y CULTO DE COSTA RICA,
AL DEPARTAMENTO DE JUSTICIA DEL GOBIERNO
DE LOS ESTADOS UNIDOS DE AMÉRICA
HACE SABER**

INDICACION DEL PROCESO:

La Fiscalía General de la República de Costa Rica lleva a cabo investigación en la causa penal número 06- 002096- 0063- PE seguida en contra de **Davis Vargas Retana**, por los delitos de **Homicidio Simple en Grado de Tentativa**, en perjuicio del ciudadano estadounidense **David William Counter**, por lo que se ha resuelto enviar el siguiente exhorto al Departamento de Justicia del Gobierno de los Estados Unidos de América, con fundamento en el Principio de Reciprocidad Internacional, los artículos 62, 154, 180, 181 y 277 del Código Procesal Penal de Costa Rica, artículo 24 y 41 de la Constitución Política de Costa Rica, y artículos 5 y 6 de la Convención de Viena, y la ley 7425 de Registro, Secuestro y Examen de Documentos Privados.

TEXTO DE LOS DELITOS INVESTIGADOS:

La Fiscalía General de la República de Costa Rica encargada de la presente causa, en este estadio procesal investiga los siguientes delitos, sancionados por el Código Penal de Costa Rica, Ley nº 4573 del 04 de mayo de 1970:

Artículo 191.- Homicidio Simple. "Quien haya dado muerte a una persona, será penado con prisión de doce a dieciocho años".

Artículo 24.- Tentativa. "Hay tentativa cuando se inicia la ejecución de un delito, por actos directamente encaminados a su consumación y ésta no se produce por causas independientes del agente..."

DESCRIPCIÓN DE LOS HECHOS QUE PROVOCAN LA PETICIÓN:

El 27 de diciembre de 2006, al ser aproximadamente las 11:30 horas, en el Parque Vargas de la Ciudad de Limón, David William Counter caminaba por el sitio, cuando fue interceptado por Davis Vargas Retana -quien mostrando un arma de fuego- le pidió al ofendido que le entregara las pertenencias que portaba; pero al percatarse el imputado que el ofendido no tenía ningún objeto de valor, le disparó a éste en el abdomen, para luego Davis Vargas retirarse del lugar.

SOBRE EL FONDO DE LA SOLICITUD:

Los hechos investigados por el Ministerio Público encuadran en el delito de Homicidio Simple en Grado de Tentativa, previsto y sancionado en el artículo 111 del Código Penal de Costa Rica el cual establece una pena de prisión de doce a dieciocho años. La presente carta rogatoria fue justificada por la Fiscalía de Limón en el grado de probabilidad que se requiere para tener al imputado como posible autor de los hechos -en lo cual concuerda este Juzgador-, siendo que en ese sentido, el Ministerio Público cuenta con el informe del Organismo de Investigación Judicial, donde se realizan diligencias de investigación como entrevistas a los testigos José Rosales Arrieta y Elizabeth García Rosales. El primero de ellos observó cómo el encartado forcejeaba con el ofendido y después de un disparo éste cae al suelo y el encartado huye del lugar; la segunda, señaló que escuchó un disparo, volviendo a ver y observó a un extranjero herido, por lo que corrió detrás del encartado sin perderlo de vista y luego unos oficiales de la Fuerza Pública lo detuvieron, decomisándole un arma de fuego que portaba en la parte delantera de sus ropas. Unido a

ello se cuenta con una ojiba de bala que se le extrajo al ofendido, la cual se comparó con el arma que se le decomisó al encartado con resultado positivo; asimismo, se le tomó anticipo jurisdiccional al ofendido y a la testigo Meter Counter, quienes describieron las vestimentas y características físicas, las cuales concordaron con las del encartado. Lleva la razón el Ministerio Público cuando señala que la información que se solicita es pertinente, a saber, se debe cumplir con un trámite de certificación del dictamen que emitió el médico a bordo del Crucero M/S Carnival Liberty donde viajaba el ofendido, ello con el fin de que dicho dictamen sea una prueba documental válida para el proceso, ya que con base a la misma, el médico legal establecerá las lesiones sufridas por el ofendido, sus incapacidades y cualquier otro aspecto importante en relación a las mismas. Igualmente, es de recibo el argumento de la Fiscalía cuando indica que resulta necesario recopilar la certificación supra citada para darle valor el legal al dictamen médico que va a realizar el médico forense con base al que rindió el médico a bordo del Crucero de cita.

FUNDAMENTO JURÍDICO DE LA SOLICITUD:

La presente solicitud de asistencia judicial internacional para la obtención de información de carácter privado, se fundamenta en las siguientes normas legales que integran el Código Procesal Penal de Costa Rica, Ley nº 7594 del 10 de abril del año 1996:

Artículo 62.- Funciones

El Ministerio Público ejercerá la acción penal en la forma establecida por la ley y practicará las diligencias pertinentes y útiles para determinar la existencia del hecho delictivo. Tendrá a su cargo la investigación preparatoria, bajo control jurisdiccional en los actos que lo requieran.

Los representantes del Ministerio Público deberán formular sus requerimientos y conclusiones en forma motivada y específica.

Artículo 65.- Cooperación internacional

Cuando las actividades delictivas se realicen, en todo o en parte, fuera del territorio nacional, o se les atribuyan a personas ligadas a una organización de carácter regional o

internacional, en los casos en que deba aplicarse la legislación penal costarricense, el Ministerio Público podrá formar equipos conjuntos de investigación con instituciones extranjeras o internacionales.

Los acuerdos de investigación conjunta deberán ser aprobados y supervisados por el Fiscal General.

Artículo 154.- Exhortos a autoridades extranjeras

Los requerimientos dirigidos a jueces o autoridades extranjeras se efectuarán por exhortos y se tramitarán en la forma establecida por la Constitución, el Derecho Internacional y el Comunitario vigentes en el país.

Por medio de la Secretaría de la Corte Suprema de Justicia, se canalizarán las comunicaciones al Ministerio de Relaciones Exteriores, el cual las tramitará por la vía diplomática.

No obstante, en casos de urgencia podrán dirigirse comunicaciones a cualquier autoridad judicial o administrativa extranjera, anticipando el exhorto o la contestación a un requerimiento, sin perjuicio de que, con posterioridad, se formalice la gestión, según lo previsto en el párrafo anterior.

Supletoriamente se fundamenta esta petición en las siguientes normas del ordenamiento jurídico costarricense: Del Código Procesal Penal Ley n° 7594 del 10 de abril de 1996, los artículos 63, 68, 153, 198, 199, 200, 201, 274, 283, 289, 291, de la Ley Orgánica del Ministerio Público n° 7442 del 25 de octubre de 1994, los artículos 2, 3, 16, de la Ley Sobre Registro, Secuestro, Examen de Documentos Privados n° 7425 del 9 de agosto de 1994, los artículos 1 a 8.

DETALLE DE LA INFORMACION REQUERIDA:

Para la investigación que lleva el Ministerio Público en este país, resulta de suma importancia y con carácter de urgencia, contar con la información así como la obtención de los medios de prueba que se detallarán. De ser necesaria orden de autoridad judicial competente para recabar los elementos probatorios, en acatamiento al ordenamiento jurídico

de los Estados Unidos de América, se solicita respetuosamente la realización de las gestiones pertinentes con ese fin:

Certificación que el médico que extendió el dictamen médico del aquí ofendido William Counter, es médico de profesión e incorporado al Colegio respectivo y si estaba facultado para para emitir dicho dictamen médico y si formaba parte de la tripulación del Crucero Carnival Liberty, que atracó en el Puerto de Limón el día 27 de diciembre de 2006.

Certificación del dictamen médico que emitió el médico a bordo del Crucero M/S Carnival Liberty, Tripulación de Bandera Estadounidense, donde viajaba el aquí ofendido y que atracó en el Puerto de Limón el día 27 de diciembre de 2006.

A solicitud del petente, se delega la tramitación internacional de este exhorto en la Oficina de Asesoría Técnica y Relaciones Internacionales de la Fiscalía General de la República.

COMUNICACIONES:

Se autoriza cualquier comunicación en Costa Rica, por medio de la Oficina de Asesoría Técnica y Relaciones Internacionales (OATRI) de la Fiscalía General de la República de Costa Rica, Tribunales de Justicia, Primer Circuito Judicial de San José, segundo piso, teléfono (506) 2295-3449 y (506) 2295-3458, al fax (506) 2223- 2602. correo electrónico oatri-mp@poder-judicial.go.cr.

Se expide en la Ciudad de Limón, Costa Rica a las siete horas del diecinueve de abril del año dos mil diez.

LIC. ARNOLDO SAMUDIO SAMUDIO
JUEZ PENAL DE LIMÓN
CORTE SUPREMA DE JUSTICIA

Limón, 30 de abril del 2010.

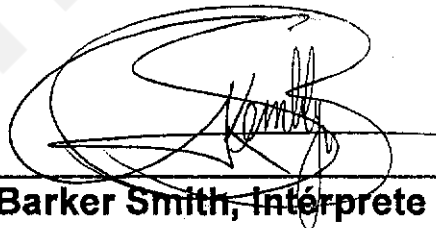
**Juez Penal:
Lic. Arnoldo Samudio Samudio
Juzgado Penal del Primer Circuito
Judicial de la Zona Atlántica, Limón.**

Estimado juez:

Por medio de la presente, yo Kembly Barker Smith, Intérprete Oficial del idioma inglés de este circuito, de domicilio y demás calidades en autos conocida, en cumplimiento del cargo que me conferido, dentro de la causa número **06-002096-0063-PE**, seguida contra **Davis Vargas Retana**, por el delito **Homicidio Simple en Grado de Tentativa** en perjuicio de **Davis William Counter**; adjunto le remito la respectiva traducción al idioma inglés del oficio dirigido a la Secretaría General de la Corte Suprema de Justicia, así como de la Carta Rogatoria, para lo que en derecho corresponda.

Sin otro particular, se despide.

Atentamente



**Kembly Barker Smith, Intérprete Oficial
Primer Circuito Judicial de la Zona Atlántica,
Limón.**

Kembly

7:30

AP
5 fols

Limon City, Costa Rica; april 19th, 2010.

Lawyer
Silvia Navarro Romanini
General Secretary
Supreme Justice Court Secretary
Costa Rica's Justice Power.
S. D.


Respectable lawyer:

I, Arnaldo Samudio Samudio, lawyer in my condition of judge of Limon's Criminal Judge Court, subscribes to manifest:

In order that Costa Rica's International Relations and Worship Ministry and the United States of America Justice Department gives the corresponding procedure to the following **ROGATORY LETTER**, to let it be reached to the repectives judicial authorities of the United States of America.

Five copies are add, and the oficial translation of the document to the ingles lenguaje.

Please request any adicional information or explanation to the telephone number 2279-14-02 / fax: 2799-13-33 at Limon's Criminal Judge Court.



Lawyer, Arnaldo Samudio Samudio
Limon's Criminal Court Judge



ROGATORY LETTER

**LAWYER, ARNOLDO SAMUDIO SAMUDIO
LIMON'S CRIMINAL JUDGE COURT
BY THE INTERVENTION OF COSTA RICA'S SUPREME JUSTICE
COURT, COSTA RICA'S INTERNATIONAL RELATIONS AND
WORSHIP MINISTRY, TO THE JUSTICE DEPARTMENT OF THE
GOBERMENT OF THE UNITED STATES OF AMERIA
MADE KNOWN THAT:**

INDICATION OF THE PROCESS:

Costa Rica's Republic General Attorney Office is carrying on an investigation of a criminal process, under the cause number **06-002096-0063-PE**, against **Davis Vargas Retana**, because of an Attempt of Simple Murder, injury of the United States citizen **David William Counter**, that is the reason why it was resolved to send the following exhort to the Goberment of United States of America Justice Department, based on the articles 62, 154, 180, 181 y 277 of Costa Rica's Criminal Proceeding Code and articles 24 and 41 of Costa Rica's Political Constitution; both based on the International Principle of Reciprocity.

TEXTS OF THE CRIMES UNDER INVESTIGATION:

Costa Rica's Republic General Attorney Office, in charge of the present cause, at this procesal stage of the investigation, the crime investigated is punished according to Costa Rica's Criminal Code, Law N° 4573 order since may 4th, 1970:

Article 191.- Simple Murder: Who gives deth to a person, will be

ROGATORY LETTER

punished with twelve to eighteen years in prison.

Article 24.- Tentative: Their is tentative when the execution of a crime is started by acts guide to its consumation and it does not fulfill, because of causes strange to the agent..."

DESCRIPTION OF THE REASON OF THE PETITION:

On december 27th, 2006; aproximatly at 11:30a.m at Vargas' Park over Limon's City, David William Counter was walking nearby, when he was intercepted by Davis Vargas Retana, who showing a gun, asked the victim to give up his belongings, but the accused saw that the victim has no valuable object, shut afther him, in his abdomen and ran away from the scene.

ABOUT THE NATURE OF THE REQUEST:

The facts investigated by the Public Prosecutor Office remarks on an Attempt of Simple Murder crime, provided by the law and punished according to article 111th of Costa Rica's Criminal Code in which it is established a penalty of twelve to eighteen years in prison. The present rogatory letter was justify by Limon's Public Prosecutor Office, in order to the level of probability that is needed to have the accused as the posible author of the facts investigated, and I as a judge agree; in this sense the Public Prosecutor Office has the Judicial Investigation Agency report, where they made diligences such as interviews to José Rosales Arrieta and Elizabeth García Rosales as witnesses. The first one observed how the accused struggle with the victim, who felt on the grown with a shot, while the accused ran away from the scene; the second witness pointed that she heard a shot, when she looked back she

ROGATORY LETTER

saw a foreigner wounded, so she ran behind the accused to keep him in her sight, little after the Police arrested he, confiscating a gun that he had in the front part of his clothes. Add to this, they have the stray bullet that was took from the victim, it was compared with the gun that was confiscated from the accused, obtaining a positive result; also, they made a jurisdictional advance with the victim and Meter Counter witness, who describes the clothing and physical characteristics that match with the enrol. The Public Prosecutor Office is right, when they pointed that the information required is pertinent, to known, as a formality it is necessary to have the certification of the medical report received from the doctor encharged in M/S Carnival Liberty Crew Ship, on which the victim was traveling, this with the objective that the doctor report be establish as a valid documental proof in the process, because base on it, our doctor will specify the kind of damages that the victim suffered, his disabilities and any other important aspect related to this. Equally, the Public Prosecutor Office argument is accepted when they say that is necessary to compile the medical report mention before, in order to give our forensic doctor report the legal value, because it will be based on the medical report extended from the doctor of the Crew Ship.

LEGAL BASE OF THE REQUEST:

The present international judicial assistance request, to obtain information that has a private character based in the following legal norms integrated in Costa Rica's Criminal Code, Law N° 7594 order since april 10th, 1996:

ROGATORY LETTER

Article 62.- Functions

The Public Prosecutor Office will execute the criminal action according to the law and will practice relevant and useful diligences to determine the existence of a criminal act. They will be in charge of the preparatory investigation, under the jurisdictional control on the acts in which it is required.

The requirements and conclusions of the Public Prosecutor Office must be motivated and specify.

Article 65.- International Cooperation

When criminal actions are made, total or partially, out of the nation territory, or they are grant to people related to an regional or international organization, in the causes that Costa Rica's legislation of to be apply, the Public Prosecutor Office can make united groups of investigation with foreign or international institutes.

The agreements of united investigations must be approved and supervised by the General Attorney.

Article 154.- Exhorts to foreings authorities

The requirements direct to judges or foreign authorities will carry out through exhorts and the procedures will be executed according the way it is established in the Constitution, the International and Community Laws of our country.

The Supreme Justice Court Secretary will conect communications with the Foreign Affairs Ministry, and it will be diplomatically procede.

Never the less, in urgent causes the information can be delevered to any judicial or administrative foreign authority, advancing the exhort the answer of the request, with out any injury, that after the formal request presentation be according to the previous paragraph.

ROGATORY LETTER

Supplementary this request is based on Costa Rica's following judicial norms: Articles 63, 68, 153, 198, 199, 200, 201, 274, 283, 289, 291, of the Criminal Proceeding Code, Law N° 7594 order since april 10th, 1996; articles 2, 3 and 16 of the Public Prosecutor Office Organic Law, N° 7442 order since october 25th, 1994; and articles 1 to 18th of the Law of Private Documents Registration, Kidnapping and Examination, N° 7425 order since august 9th, 1994.

DETAILS OF THE INFORMATION REQUIRED:

The following details of the information and the means to obtain proofes are very important and have an urgent character for the investigation that the Public Prosecutor Office of this country is carrying out. Fundamentaly we need the United States of America respective judicial authority in order to help us compile this elements of proof:

- **A certification that the doctor who extended the medical report of the victim William Counter, is a profesional doctor inscribe in the respective College, if he was authorice to emit the medical report and if he was part of Carnival Liberty Crew Ship, that docked in Limon's City december 27th, 2006.**
- **A certification of the medical report extended by the doctor a bord M/S Carnival Liberty Crew Ship, crew with the United States Flag, in which the victim was traveling december 27th, 2006; when it docked at Limon's Harbor.**

The international procedure of this exhort is in charge of the International Relations and Thechnical Advice Office of the Republic General Attorney Office, according to my order.

ROGATORY LETTER

COMUNICATIONS:

In Costa Rica, all means of communications are authorize through the International Relations and Thechnical Advice Office of the Republic General Attorney Office (OATRI), located on the second flour of the First Court House Judicial Circuit at San Jose, telephones (506) 2295-34-49 and (506) 2295-34-58, fax: (506) 2223-26-02, e-mail: oatri-mp@poder-judicial.go.cr

It is given in Limon's City, Costa Rica at seven o'clock on april nineteenth, two thousand ten.

Lawyer Arnaldo Samudio Samudio.
Limon's Criminal Judge
Supreme Justice Court.

Limon City, Costa Rica; april 19th, 2010.

Lawyer
Silvia Navarro Romanini
General Secretary
Supreme Justice Court Secretary
Costa Rica's Justice Power.
S. D.

Respectable lawyer:

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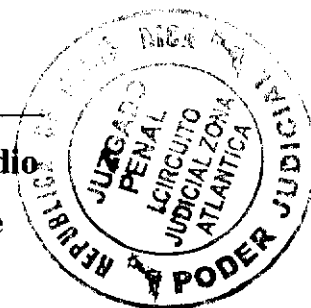
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Arnaldo Samudio

Lawyer, Arnaldo Samudio Samudio
Limon's Criminal Court Judge



ROGATORY LETTER

**LAWYER, ARNOLDO SAMUDIO SAMUDIO
LIMON'S CRIMINAL JUDGE COURT
BY THE INTERVENTION OF COSTA RICA'S SUPREME JUSTICE
COURT, COSTA RICA'S INTERNATIONAL RELATIONS AND
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ROGATORY LETTER

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ROGATORY LETTER

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Never the less, in urgent causes the information can be delevered to any judicial or administrative foreing authority, advancing the exhort the answer of the request, with out any injury, that after the formal request presentation be according to the previous paragraph.

ROGATORY LETTER

Supplementary this request is based on Costa Rica's following judicial norms: Articles 63, 68, 153, 198, 199, 200, 201, 274, 283, 289, 291, of the Criminal Proceeding Code, Law N° 7594 order since april 10th, 1996; articles 2, 3 and 16 of the Public Prosecutor Office Organic Law, N° 7442 order since october 25th, 1994; and articles 1 to 18th of the Law of Private Documents Registration, Kidnapping and Examination, N° 7425 order since august 9th, 1994.

DETAILS OF THE INFORMATION REQUIRED:

The following details of the information and the means to obtain proofes are very important and have an urgent character for the investigation that the Public Prosecutor Office of this country is carrying out. Fundamentaly we need the United States of America respective judicial authority in order to help us compile this elements of proof:

- **A certification that the doctor who extended the medical report of the victim William Counter, is a profesional doctor inscribe in the respective College, if he was authorice to emit the medical report and if he was part of Carnival Liberty Crew Ship, that docked in Limon's City december 27th, 2006.**
- **A certification of the medical report extended by the doctor a bord M/S Carnival Liberty Crew Ship, crew with the United States Flag, in which the victim was traveling december 27th, 2006; when it docked at Limon's Harbor.**

The international procedure of this exhort is in charge of the International Relations and Thechnical Advice Office of the Republic General Attorney Office, according to my order.

ROGATORY LETTER

COMUNICATIONS:

In Costa Rica, all means of communications are authorize through the International Relations and Thechnical Advice Office of the Republic General Attorney Office (OATRI), located on the second flour of the First Court House Judicial Circuit at San Jose, telephones (506) 2295-34-49 and (506) 2295-34-58, fax: (506) 2223-26-02, e-mail: oatri-mp@poder-judicial.go.cr

It is given in Limon`s City, Costa Rica at seven o`clock on april nineteenth, two thousand ten.

Lawyer Arnaldo Samudio Samudio.
Limon`s Criminal Judge
Supreme Justice Court.

United States Code Effective: October 19, 2009

Title 18. Crimes and Criminal Procedure

Part II. Criminal Procedure

Chapter 223. Witnesses and Evidence

§ 3512. Foreign requests for assistance in criminal investigations and prosecutions

(a) Execution of request for assistance.--

(1) In general.--Upon application, duly authorized by an appropriate official of the Department of Justice, of an Attorney for the Government, a Federal judge may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing, and restitution.

(2) Scope of orders.--Any order issued by a Federal judge pursuant to paragraph (1) may include the issuance of--

(A) a search warrant, as provided under Rule 41 of the Federal Rules of Criminal Procedure;

(B) a warrant or order for contents of stored wire or electronic communications or for records related thereto, as provided under section 2703 of this title;

(C) an order for a pen register or trap and trace device as provided under section 3123 of this title; or

(D) an order requiring the appearance of a person for the purpose of providing testimony or a statement, or requiring the production of documents or other things, or both.

(b) Appointment of persons to take testimony or statements.--

(1) In general.--In response to an application for execution of a request from a foreign authority as described under subsection (a), a Federal judge may also issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both.

(2) Authority of appointed person.--Any person appointed under an order issued pursuant to paragraph (1) may--

(A) issue orders requiring the appearance of a person, or the production of documents or other things, or both;

(B) administer any necessary oath; and

(C) take testimony or statements and receive documents or other things.

(c) Filing of requests.--Except as provided under subsection (d), an application for execution of a request from a foreign authority under this section may be filed--

(1) in the district in which a person who may be required to appear resides or is located or in which the documents or things to be produced are located;

(2) in cases in which the request seeks the appearance of persons or production of documents or things that may be located in multiple districts, in any one of the districts in which such a person, documents, or things may be located; or

(3) in any case, the district in which a related Federal criminal investigation or prosecution is being conducted, or in the District of Columbia.

(d) Search warrant limitation.--An application for execution of a request for a search warrant from a foreign authority under this section, other than an application for a warrant issued as provided under section 2703 of this title, shall be filed in the district in which the place or person to be searched is located.

(e) Search warrant standard.--A Federal judge may issue a search warrant under this section only if the foreign offense for which the evidence is sought involves conduct that, if committed in the United States, would be considered an offense punishable by imprisonment for more than one year under Federal or State law.

(f) Service of order or warrant.--Except as provided under subsection (d), an order or warrant issued pursuant to this section may be served or executed in any place in the United States.

(g) Rule of construction.--Nothing in this section shall be construed to preclude any foreign authority or an interested person from obtaining assistance in a criminal investigation or prosecution pursuant to section 1782 of title 28, United States Code.

(h) Definitions.--As used in this section, the following definitions shall apply:

(1) Federal judge.--The terms "Federal judge" and "attorney for the Government" have the meaning given such terms for the purposes of the Federal Rules of Criminal Procedure.

(2) Foreign authority.--The term "foreign authority" means a foreign judicial authority, a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters.

(Added Pub.L. 111-79, § 2(4), Oct. 19, 2009, 123 Stat. 2087.)

18 U.S.C.A. § 3512, 18 USCA § 3512

Current through P.L. 111-86 (excluding P.L. 111-84) approved 10-29-09