UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: EMPRESA PÚBLICA DE HIDROCARBUROS DEL ECUADOR - EP PETROECUADOR,	§	
Applicant,	§	
VS.	§	MISC. ACTION NO. 4:19-MC-2534
WORLEYPARSONS INTERNATIONAL, INC.,	§	
Respondent.		

ORDER

Before the Court are Respondent's Motion to Vacate and Quash Subpoena (the "Motion") (Doc. #13), Applicant's Response (Doc. #19), Respondent's Reply (Doc. #21), and the declarations filed in support. Doc. #15, Doc. #23, Doc. #27, and Doc. #29. Having considered the parties' submissions, the oral arguments from the December 10, 2019 hearing, and the applicable legal authority, the Court denies the Motion.

I. Background

Empresa Pública de Hidrocarburos del Ecuador – EP Petroecuador ("Applicant") is a state-owned, Ecuadorian oil company that procures goods and services from outside providers to conduct its operations. Doc. #2 at 3. WorleyParsons International, Inc. ("Respondent") is a former outside provider that received more than $200 million in contracts from Applicant's Division of Refining (the "Refining Division") between 2011 to 2015. *Id.*, Ex. A ¶¶ 31–32. In 2016, Applicant's Litigation Department and Ecuadorian authorities uncovered an international corruption and bribery scheme involving employees and providers of the Refining Division, who acted in coordination to circumvent and evade the company's internal controls (the "Petroecuador

Scheme"). *Id.*, Ex. A at ¶¶ 10–21. Since then, prosecutors in both the United States and Ecuador have filed criminal charges against some employees and providers in connection with their participation in the Petroecuador Scheme. *Id.* at 5–7.

On August 26, 2019, Applicant filed an ex parte application under 28 U.S.C. § 1782(a), requesting the Court's assistance in obtaining discovery for use in ongoing criminal proceedings and investigations in Ecuador arising out of the Petroecuador Scheme (the "Application"). Doc. #1–2. Specifically, Applicant sought the issuance of subpoenas commanding Respondent to produce documents and provide deposition testimony regarding its knowledge of and role in the Petroecuador Scheme. Doc. #1, Ex. A. Applicant also included a sworn declaration from its Chief Litigation Counsel Marco Emilio Prado Jimenez ("Prado") in support of the Application.[1] Doc. #2, Ex. A.

The Court granted the Application on August 30, 2019 (the "Order"). Doc. #9. That same day, Applicant served Respondent with a subpoena for document production, containing a response date of September 16, 2019 (the "Subpoena"). Doc. #11. The Subpoena lists seven categories of documents concerning (1) bribe payments and other irregularities; (2) Petroecuador employees and their associates; (3) Petroecuador vendors and related persons; (4) WorleyParsons' subcontractor Tecnazul Cia. Ltda. and related persons[2]; (5) the MMR Group, Inc.[3]; (6) WorleyParsons' contracts with Petroecuador; and (7) due diligence performed on vendors. *Id.*

On September 11, 2019, Respondent filed the Motion, alleging that Applicant had not established its right to discovery assistance under § 1782(a), though Respondent failed to cite any

[1] Applicant filed a second declaration from Prado on October 22, 2019. Doc. #27.
[2] Respondent subcontracted services to Tecnazul Cia. Ltda., a company involved in the Petroecuador Scheme. Doc. #2, Ex. A ¶¶ 37–38.
[3] MMR Group, Inc. is a provider that worked with Respondent to obtain contracts with the Refining Division and had allegedly paid bribes to acquire these contracts. Doc. #2, Ex. A ¶¶ 37–39.

supporting law.[4] Doc. #13. Applicant filed a response on October 2, 2019, asserting that the Application met the requirements of § 1782(a) and that the Court should exercise its discretion to grant the Application (the "Response"). Doc. #14. On October 9, 2019, Respondent filed a fully-briefed reply in support of the Motion (the "Reply"), along with declarations from counsel and the Ecuadorian law professor Juan Pablo Albán Alencastro ("Professor Albán").[5] Doc. #21–23.

On December 10, 2019, the Court held a telephonic hearing during which the parties presented oral arguments on the Motion and the Application.[6] At the conclusion of the hearing, the Court ordered the parties to meet and confer regarding an agreement to narrow the scope of the Subpoena. Per the Court's instructions, the parties provided a joint status update on December 20, 2019, informing the Court that they had failed to reach a mutual agreement. Doc. #37.

The parties now seek the Court's assistance in resolving this discovery dispute. For the following reasons, the Court concludes that the Application meets the requirements of § 1782(a) and finds no discretionary basis for denying the Application. Accordingly, the Court declines to

[4] In the Motion, Respondent asked the Court to set a briefing scheduling to submit a memorandum of law and any supporting papers. Yet, Rule B(5) of this Court's Procedures and Practices sets clear deadlines for parties to file a response and reply brief. This rule also expressly prohibits parties from filing a motion and separate "Memorandum of Law."

Attempting to supplement the Motion, Respondent also filed an Amended Motion to Vacate and Quash without seeking leave of court on September 26, 2019, further expounding on the arguments initially presented in the Motion. Doc. #14. The Court ultimately struck the amended motion during the December 10, 2019 hearing.

[5] Respondent submitted the first declaration from Professor Albán on September 26, 2019 (Doc. #15) and a second, lengthier declaration on October 9, 2019. Doc. #23. After Applicant filed Prado's second declaration (Doc. #27), Respondent proffered a third declaration from Professor Albán on October 24, 2019. Doc. #29.

[6] During the hearing, the Court addressed other motions, responses, and replies filed by the parties. *See* Doc. #14, Doc. #16–18, Doc. #25–26, Doc. #28, and Doc. #31. Citing its Procedures and Practices, the Court struck these pleadings from the record. Doc. #35 at 5:20–23. Accordingly, only the Motion, the Response, the Reply, and the supporting declarations remain before the Court.

vacate the Order or to quash the Subpoena.

II. Legal Standard

An application under § 1782(a) must meet three statutory prerequisites: "(1) the person from whom discovery is sought must reside or be found in the district in which the application is filed; (2) the discovery must be for use in a proceeding before a foreign tribunal; and (3) the application must be made by a foreign or international tribunal or 'any interested person.'" *Bravo Express Corp. v. Total Petrochemicals & Ref. U.S.*, 613 F. App'x 319, 322 (5th Cir. 2015) (quoting *Tex. Keystone, Inc. v. Prime Natural Res., Inc.*, 694 F.3d 548, 553 (5th Cir.2012)). Once an applicant establishes the requirements of § 1782(a), the court "has the discretion to grant the application seeking the authority to issue subpoenas." *Tex. Keystone*, 694 F.3d at 553 (citing *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004)). In *Intel*, the Supreme Court set forth four discretionary factors to consider in evaluating an application under § 1782(a) (collectively, the "*Intel* factors"): "(1) whether 'the person from whom discovery is sought is a participant in the foreign proceeding,' because 'nonparticipants in the foreign proceeding may be outside the foreign tribunal's jurisdictional reach' and therefore their evidence may be 'unobtainable absent § 1782(a) aid'; (2) 'the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance'; (3) 'whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States'; and (4) whether the § 1782(a) request is 'unduly intrusive or burdensome.'" *Bravo*, 613 F. App'x at 323–24 (quoting *Intel*, 542 U.S. at 264–65)).

III. Analysis

a. Requirements of § 1782(a)

1. "For Use" in a Foreign Proceeding

Respondent argues that Applicant cannot satisfy two of the three statutory criteria found in § 1782(a).[7] The first requirement at issue is whether the discovery sought is "for use in a proceeding before a foreign tribunal." *Bravo*, 613 F. App'x at 322 (quoting *Tex. Keystone*, 694 F.3d at 553)). Section 1782(a) "only requires the foreign proceeding to be in reasonable contemplation," not necessarily pending or imminent. *Id.* (quoting *Intel*, 542 U.S. at 259). An applicant under § 1782(a) can establish "reasonable contemplation" by providing "reliable indications of the likelihood that proceedings will be instituted within a reasonable time." *Bravo*, 613 F. App'x at 322 (quoting *Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1270–71 (11th Cir. 2014) [hereinafter, "*Consorcio*"]).

Here, Applicant provided two potential avenues for using the requested documents: (1) in two pending criminal proceedings in Ecuador[8] and (2) in fifteen criminal investigations opened by Ecuador's National Prosecutor's Office. Doc. #2, Ex. A ¶¶ 25–26 and Doc #19 at 5–8. Yet,

[7] Respondent does not dispute that it resides in the Southern District of Texas. *See Bravo*, 613 F. App'x at 322 ("[T]he person from whom discovery is sought must reside or be found in the district in which the application is filed").

[8] In his declaration, Prado listed seven "ongoing" cases in Ecuador. Doc. #2, Ex. A ¶ 25. Of those cases, Respondent alleges that only two are pending at the trial phase, while four are on appeal. and one is closed. Doc. #21 at 3 no. 4 and Doc. #35 at 9:23–24. During the December 10, 2019 hearing, Applicant conceded that "at least one of those proceedings is sufficient for 1782" but later referred to the "two cases that are before the trial courts in Ecuador." Doc. #35 at 19:22–25.

Ideally, Applicant would have clarified which cases remain pending or which are closed or on appeal. Because Respondent named two pending criminal actions in the Reply, and neither party has submitted additional evidence, the Court will assume for the purposes of this Order that two cases remain ongoing at the trial phase.

Respondent contends that Applicant has failed to identify a specific "qualifying proceeding" under § 1782(a). Doc. #21 at 2–5. Respondent further alleges that Applicant cannot "use" documents obtained through the Subpoena in any investigation or proceeding in Ecuador. *Id.* at 5–6.

Here, the Court finds that the avenues identified by Applicant satisfy § 1782(a).[9] For the two pending criminal matters, Prado identified the underlying crime as "undue influence peddling" and the defendants as corrupt providers and associated individuals. Doc. #2, Ex. A ¶¶ 14, 25. For the fifteen open criminal investigations, Prado provided the case number and crime being investigated. *Id.* ¶ 26. In addition, Prado stated that Applicant is considered a victim under Ecuadorian law in all of the ongoing matters and pointed to other criminal cases in Ecuador relating to the Petroecuador Scheme that are either closed or on appeal. Doc. #2 at ¶¶ 24–25, Doc. #21 at 3 no. 4, and Doc. #27 ¶ 14. Lastly, Prado described how Respondent could have played a role in the Petroecuador Scheme based on its work with the Refining Division and its relationships with employees who have since been charged and convicted for their involvement in the scheme. Doc. #2, Ex. A ¶¶ 24–25, 31–39. Thus, Prado's declarations sufficiently demonstrate that Ecuadorian proceedings are not "just a twinkle in counsel's eye" but "within reasonable contemplation."

[9] Applicant had also suggested a third potential avenue for using the requested documents: in "contemplated proceedings" arising out of its own internal investigations. Doc. #19 at 3–4 and Doc. #2 at 15–16. Applicant claims that these internal investigations are "in reasonable contemplation of additional legal proceedings." Doc. #2 at 15–16 and Doc. #19 at 7–8. But this claim falls short of establishing that legal proceedings are "within reasonable contemplation." *Intel*, 542 U.S. at 259. Applicant did not indicate when these investigations would conclude, when it planned to file suit, or who it expected to sue. *See Bravo*, 613 F. App'x at 322–23 (future litigation was "within reasonable contemplation" where applicant submitted sworn affidavit from counsel, declaring that action would "be imminently filed," and counsel had identified prospective defendant, venue, and time frame for filing suit); *Consorcio*, 747 F.3d at 1270–71 (contemplated proceedings were "within reasonable contemplation" in light of applicant's "facially legitimate and detailed explanation of its ongoing investigation, its intent to commence a civil action against its former employees, and the valid reasons for . . . obtain[ing] the requested discovery). Therefore, the Court finds no "reliable indications . . . that proceedings will be instituted within a reasonable time" because of Applicant's internal investigations. *Consorcio*, 747 F.3d at 1270–71.

Certain Funds, Accounts &/or Inv. Vehicles v. KPMG, LLP, 798 F.3d 113, 124 (2d Cir. 2015).

Notably, Respondent does not dispute its role in Petroecuador Scheme or whether criminal proceedings in Ecuador are "within reasonable contemplation." Rather, Respondent asserts that Applicant did not explain precisely how each document request relates to a specific investigation or proceeding. Doc. #19 at 2–3 and Doc. #35 at 9:1–11, 9:23–10:3. But Respondent cites no case law suggesting that an applicant must establish with "requisite particularly" that the requested discovery is "necessary" to a foreign proceeding. Doc. #35 at 9:8–11, 9:24–10:3. In fact, the Fifth Circuit held that an applicant had satisfied the "for use" requirement simply by identifying and describing a foreign proceeding "within reasonable contemplation," which did not entail a showing of relevance or necessity. *See Bravo*, 613 Fed. App'x. at 323 (concluding that applicant satisfied § 1782(a) where counsel provided sworn affidavit stating that action would be "imminently filed," explained facts giving rise to suit, and prepared "claim of particulars" for UK litigation). So this Court is reluctant to impose additional requirements that neither the case law nor the language of § 1782(a) demands. *See Mees v. Buiter*, 793 F.3d 291, 298 (2d Cir. 2015) (quoting *Brandi–Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 82 (2d Cir. 2012)) (observing that a necessity requirement would "entail a painstaking analysis not only of the evidence already available to the applicant, but also of the amount of evidence required to prevail in the foreign proceeding . . . [and] would therefore 'require interpretation and analysis of foreign law'").

Furthermore, Respondent relies on a Second Circuit case that is not dispositive of whether the Application meets the "for use" requirement. In *Accent Delight*, the Second Circuit held that § 1782(a) requires an applicant to establish that it "has the practical ability to inject the requested information into a foreign proceeding" because "for use" means "that the requested discovery is 'something that will be employed with some advantage or serve some use in the proceeding.'" *In*

re Accent Delight Int'l Ltd., 869 F.3d 121, 132 (2d Cir. 2017) (quoting *Mees*, 793 F.3d at 298). First, the Court notes that the Fifth Circuit has not yet adopted the holding in *Accent Delight*. Second, even if *Accent Delight* controls, Applicant established that it can "inject" the requested discovery into the Ecuadorian investigations and proceedings. Indeed, Prado identified several ways to use the discovery at different points in the criminal prosecution process, citing relevant provisions of Ecuador's Organic and Integral Criminal Code (the "COIP"). Doc. #27. For instance, Applicant could submit information to the National Prosecutor via a criminal complaint or a complaint before an Ecuadorian court. *Id.* ¶ 10. Additionally, Applicant can provide information during the prosecutor's indictment stage as both a victim and a "particularized private criminal accuser" under the COIP. *Id.* ¶¶ 7, 21–31. Ecuadorian law also empowers a victim or "particularized private criminal accuser" to "announce" relevant evidence at the "pre-trial prepatory [sic] stage" or at the trial stage—a right that Applicant has already exercised in cases arising out of the Petroecuador Scheme. *Id.* ¶¶ 32–36.

Professor Albán averred that these provisions of Ecuadorian law, allowing Applicant to submit information at various stages of a criminal prosecution, are "not a license to take evidence from third parties independently," because "nothing in Ecuadorian law would permit [Applicant] to so." Doc. #29 ¶¶ 15, 19. But this Court need not engage in "speculative forays" into Ecuadorian rules of evidence, because Respondent has not provided any "authoritative proof" that Ecuadorian law would preclude Applicant from using discovery obtained with the aid of § 1782(a). *Ecuadorian Plaintiffs v. Chevron Corp.*, 619 F.3d 373, 378 (5th Cir. 2010) (quoting *In re Application for an Order Permitting Metallgesellschaft AG to take Discovery*, 121 F.3d 77 (2d Cir.1997)). And no one alleges that Ecuadorian law itself authorizes Applicant to obtain discovery directly from Respondent—the "license" to do so is found in § 1782(a). For those reasons, the

Court determines that Applicant sufficiently demonstrated that the documents requested in the Subpoena are "for use" in a foreign proceeding.

2. Application Made by Interested Person

The second requirement at issue is whether Applicant constitutes an "interested person" under § 1782. *See Bravo*, 613 F. App'x at 322 ("[T]he application must be made by a foreign or international tribunal or 'any interested person.'"). The Supreme Court has made clear the statute encompasses not only private litigants and foreign officials but also complainants with a "significant role" in the foreign proceeding. *Intel*, 542 U.S. at 256–57. Because this type of complainant "possesses a reasonable interest in obtaining judicial assistance," it qualifies as an "interested person" under § 1782(a). *Id.* at 256 (alternation and internal quotation marks omitted). Courts located outside of this circuit have required an applicant to possess "participation rights" in a foreign proceeding to meet the "interested person" requirement. *See Application of Furstenberg Fin. SAS v. Litai Assets LLC*, 877 F.3d 1031, 1035 (11th Cir. 2017) (finding that applicants who planned to file criminal complaint were "interested persons" because they had the right to submit information for the investigating judge's consideration and to appeal the judge's decision not to proceed with the investigation); *Lazaridis v. Int'l Ctr. for Missing & Exploited Children, Inc.*, 760 F. Supp. 2d 109, 113–14 (D.D.C. 2011), *aff'd sub nom. In re Application for an Order Pursuant to 28 U.S.C. § 1782*, 473 F. App'x 2 (D.C. Cir. 2012) (determining that applicant met the "interested person" requirement as the subject of an investigation in Greece, even if not considered an "interested party" under Greek law, but ultimately denying application on discretionary grounds).

In this case, Applicant claims that it is as an "interested person" under § 1782(a) because of its status as a complainant, victim, and "particularized private criminal accuser" in the

Ecuadorian criminal proceedings. Doc. #2 and Doc. #19 at 10–12. Respondent contends that Applicant lacks "the type of 'significant procedural rights'" in these proceedings to have "standing" as an "interested person." Doc. #21 at 6 (quoting *Intel*, 542 U.S. at 255–56).

Because Applicant can exercise "participation rights" in the criminal prosecutions in Ecuador, Applicant qualifies as an "interested person" under § 1782(a). For instance, as a victim and "particularized private criminal accuser," Applicant can provide information to the National Prosecutor during the investigative stages or can introduce evidence during the pretrial and trial stages. Doc. #27 ¶¶ 5, 7, 27–31, 32–36. Even Professor Albán concedes that Applicant has the right to submit information to the National Prosecutor and to request the use of certain evidence at trial. Doc. #29 ¶¶ 15, 17, 19. Since Ecuadorian law confers Applicant a special status, and Applicant can independently bring information to the attention of the prosecutor or the court, Applicant thereby "possesses a reasonable interest in obtaining judicial assistance." *Intel*, 542 U.S. at 256. Thus, the Application was properly submitted by a qualifying "interested person." Accordingly, the Court affirms that Applicant has satisfied the three statutory requirements expressed in § 1782(a).

b. *Intel* Factors

1. Whether Respondent is Participant in Foreign Proceeding

Next, Respondent argues that three of the four *Intel* factors weigh in favor of vacating the Court's Order and quashing the Subpoena.[10] Doc. #13 ¶¶ 7–11 and Doc. #19 at 7–10. The first *Intel* factor is "whether 'the person from whom discovery is sought is a participant in the foreign

[10] Respondent does not contest that the second *Intel* factor weighs in Applicant's favor. *See Intel*, 542 U.S. at 265–65 (evaluating "the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance").

proceeding,' because 'nonparticipants in the foreign proceeding may be outside the foreign tribunal's jurisdictional reach' and therefore their evidence may be 'unobtainable absent § 1782(a) aid.'" *Bravo*, 613 F. App'x at 323 (quoting *Intel*, 524 U.S. at 264). Respondent asserts that this factor weighs in favor of denying the Application because the documents requested are "already within the jurisdiction of Ecuadorian investigators." Doc. #21 at 8. Likewise, Professor Albán stated that Ecuadorian law authorizes the procurement of evidence abroad upon request of the National Prosecutor to the relevant foreign official or by way of a letter rogatory to the country's judicial authority. Doc. #23 ¶¶ 20, 34.

But neither Respondent nor Professor Albán affirmatively state whether the documents are actually within the "jurisdictional reach" of an Ecuadorian official or court, given that Respondent is a nonparticipant in the criminal proceedings. Respondent also provided no evidence showing that the procedural mechanisms available in Ecuador would implicate a U.S. corporation's obligation to produce documents for use in Ecuadorian courts. This concern is particularly heightened where (1) Respondent's principal place of business is in this district; (2) Respondent worked with individuals and entities involved in the Petroecuador Scheme in this district; (3) and some of Applicant's former employees, who are now facing corruption and bribery charges, visited Respondent's offices that are located in this district. Doc. #2 at 17, Ex. A. ¶ 41. From this Court's vantage point, Respondent's continued objections to each document request, as well as the parties' failure to reach a mutual agreement, indicates that Respondent is unlikely to submit to the jurisdiction of Ecuadorian courts or to comply with a request for production from Ecuadorian authorities.[11] Doc. #37, Ex. A. Thus, the Court finds that this *Intel* factor weighs in favor of

[11] Respondent claims that it has provided information to Ecuadorian prosecutors in other criminal proceedings relating to the Petroecuador Scheme. Doc. #13 at 17. But it did not specify the type of information provided or whether it was submitted voluntarily.

granting the Application, since the discovery sought is likely "unobtainable absent § 1782(a) aid." *Bravo*, 613 F. App'x at 323 (quoting *Intel*, 524 U.S. at 264).

2. Whether Applicant Is Circumventing Proof-Gathering Restrictions

The third *Intel* factor is "whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions. . . ." *Intel*, 524 U.S. at 265. Asserting that this factor weighs against discovery assistance, Respondent alleges that Applicant is attempting to usurp the role of the Ecuadorian prosecutor and to circumvent Ecuador's limits on pre-litigation discovery. Doc. #13 ¶ 9 and Doc. #21 at 9. It also claims that Applicant, as a state-owned entity, is acting on behalf of the Republic of Ecuador to bypass discovery procedures in a pending arbitration between the country and Respondent, who initiated the proceeding in February 2019. Doc. #13 ¶ 10 and Doc. #21 at 10. According to Respondent's counsel, the arbitration concerns issues involving Applicant. Doc. #35 at 31:13–18.

As to the latter contention, nothing in the record indicates that the Court should undertake a more rigorous analysis of this *Intel* factor simply because Applicant is a state-owned entity.[12] Applicant is not a party to the arbitration, and the record contains no evidence of the company operating as an instrumentality of the Ecuadorian prosecutor. Doc. #19 at 17 and Doc. #35 at 36:14–15. Respondent also cites no legal authority suggesting that the Court should examine a § 1782(a) application submitted by a state-owned entity with particular scrutiny, nor has it alleged that Applicant seeks discovery in this Court that is unavailable to Ecuador in the pending arbitration. Therefore, the Court finds no reason to deny the Application on this ground.

[12] Respondent cites to statements in Professor Albán's declaration to underscore the "clear procedural limitations on the ability of the State to obtain documents for use in criminal proceedings." Doc. #21 at 9. But the statements cited only address discovery procedures in civil and criminal litigation, generally, and not whether special rules apply to state-owned entities. *See* Doc. #23 ¶¶ 13, 16–21, 33, 37.

As to the former contention, the Court has already addressed the different ways that Applicant can participate in the investigations and proceedings in Ecuador. *See supra* at 8, 10; Doc. #27 ¶¶ 21–36. Rather than submit evidence showing that Applicant intends to "circumvent important evidence-gathering restrictions," Respondent relies solely on Professor Albán's interpretation of Ecuadorian criminal procedure. Doc. #19 at 8. But Professor Albán's interpretation is just that—his understanding of the right to participate as exclusive of the right to gather evidence under Ecuadorian law. *See, e.g.*, Doc. #29 ¶ 15 (complainant has the right "to make an accusation based on the information in his or her possession" but that is "not license to take evidence from third parties independently"); *Id.* ¶ 17 ("private accusation does not require independent evidence," but if accepted, then a victim can ask the prosecutor or the court to use that evidence during trial); *Id.* ¶ 19 (Applicant has the right to gather information "in its day-to-day" but "information in the possession of third parties is not in [its] day-to-day"). At any rate, because the record does not "clearly demonstrate" that Applicant is attempting to circumvent any evidence-gathering procedures, the Court may properly order discovery under § 1782(a). *See Chevron Corp.*, 619 F.3d at 377 (5th Cir. 2010) (affirming district court's order granting § 1782(a) relief where "the record does not clearly demonstrate that [the applicant] is attempting to evade restrictions on discovery in Ecuador"). Thus, the Court determines that the third *Intel* factor does not weigh against granting the Application.

3. Whether Application is unduly intrusive or burdensome

Lastly, the fourth *Intel* factor is "whether the § 1782(a) request is 'unduly intrusive or burdensome.'" *Bravo*, 613 F. App'x at 323–24 (quoting *Intel*, 524 U.S. at 265). "A court may find that a subpoena presents an undue burden when the subpoena is facially overbroad. *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). "[A] subpoena for documents

from a non-party is facially overbroad where the subpoena's document requests seek all documents concerning the parties to the underlying action, regardless of whether those documents relate to that action and regardless of date; the requests are not particularized; and the period covered by the requests is unlimited." *MetroPCS v. Thomas*, 327 F.R.D. 600, 610 (N.D. Tex. 2018) (quoting *Am. Fed'n of Musicians of the U.S. & Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 45 (N.D. Tex. 2015) (internal alterations omitted).

In light of the fourth *Intel* factor, Respondent asks the Court to quash the Subpoena as "facially overbroad." Respondent points out that the Subpoena "seeks discovery on more than 20 individuals and more than 20 business entities . . . from January 1, 2011 to the present." Doc. #21 at 10. The subpoena also consists of 38 specific requests within seven categories of documents. Doc. #1, Ex. 1.

Still, the Subpoena is not facially overbroad. The subpoena does not seek "all documents" concerning the individuals and entities identified and limits its requests to particular types of documents "containing, discussing, or relating to communications." *See, e.g.*, *Id.* ¶¶ 12–14. Other requests are limited to Respondent's internal documents or "documents not previously shared with Petroecuador." *See Id.* ¶¶ 3, 6, 16 34, 37–38. The Subpoena also includes a time period spanning from January 11, 2011—the year that Respondent executed its first contract with Applicant—to the present. *Id.* ¶ 12 and Doc. #2, Ex. A ¶ 31. Based on these facts, the Court finds that the Subpoena is not facially overbroad. *Cf. In re O'Hare*, No. MISC. H-11-0539, 2012 WL 1377891, at *2 (S.D. Tex. Apr. 19, 2012) (finding subpoena facially overbroad where it sought "all documents concerning the parties" to the action, contained requests that were "not particularized," and covered an unlimited time period); *Turnbow v. Life Partners, Inc.*, No. 3:11-CV-1030-M, 2013 WL 1632795, at *1 (N.D. Tex. Apr. 16, 2013) (quashing subpoena as facially overbroad because

plaintiffs sought "all documents" relating to defendant's internal practices and failed to limit their requests to "any reasonable restriction on time" or "to any categories of documents" related to the case). In sum, the Court concludes that the fourth *Intel* factor does not weigh in favor of quashal.[13]

Accordingly, the Court determines that it properly exercised its discretion to grant the Application under § 1782(a), "informed by the twin aims of the statute . . . to provide efficient means of assistance in our federal courts to participants in international litigation and to encourage foreign countries by example to provide similar means of assistance to our courts." *Bravo*, 613 F. App'x at 321–22 (quoting *Tex. Keystone*, 694 F.3d at 553–54)) (cleaned up).

IV. Conclusion

For the foregoing reasons, the Court concludes that the Application satisfies the four threshold requirements of Section 1782(a) and that none of the *Intel* factors weigh in favor of denying the Application or quashing the Subpoena.

Accordingly, the Motion is hereby DENIED. Respondent must respond to the document requests in the Subpoena within 45 days of the entry of this Order.

It is so ORDERED.

April 13, 2020
Date

The Honorable Alfred H. Bennett
United States District Judge

[13] The Court notes that it permitted the parties to reach a mutual agreement regarding the scope of the Subpoena, but Respondent continued to object to all 38 document requests in some fashion, leading to the current impasse. Doc. #37, Ex. A.