

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Action No. 1:14-cv-00208-REB

ELMER EDUARDO CAMPOS-ÁLVAREZ,

Applicant,

v.

NEWMONT MINING CORPORATION;  
NEWMONT PERU SRL, and  
NEWMONT USA LTD.,

Respondents.

---

**ORDER CONCERNING APPLICATION FOR  
DISCOVERY UNDER 28 U.S.C. § 1782**

---

**Blackburn, J.**

This matter is before the court on **Applicant Elmer Eduardo Campos-Alvarez's Motion for Supplemental Discovery Pursuant To 28 U.S.C. § 1782** [#32]<sup>1</sup> filed December 11, 2015. The respondents filed a response [#35] and the applicant filed a reply. For the reasons set forth below, I grant the motion in part and deny it in part.

**I. JURISDICTION**

This matter arises under 28 U.S.C. § 1782. This court has jurisdiction under 28 U.S.C. § 1331 (federal question).

---

<sup>1</sup> “[#32]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

## II. BACKGROUND

The applicant, Elmer Eduardo Campos-Álvarez, seeks leave to serve on the respondents certain discovery requests. Mr. Campos is a campesino farmer from the Cajamarca region of Peru. On November 29, 2011, Mr. Campos was shot in the back while he was peacefully protesting at an area concessioned to Minera Yanacocha for a gold mining project known as the Conga Mine Concession (the Mine). As a result of the shooting, Mr. Campos lost a kidney and his spleen, leaving him paralyzed from the waist down. He says he was shot by police officers employed by the Peruvian National Police (PNP). The PNP officers were acting under a contract with Minera Yanacocha, a joint venture in which respondent Newmont Mining Corporation is a majority shareholder and manager. The PNP contracted to provide security at the area where Minera Yanacocha was operating the Mine.

A local prosecutor is investigating whether the shootings of Mr. Campos and others were crimes. Mr. Campos is identified as an aggrieved party in that investigation. It was on his behalf, and on behalf of others, that the criminal complaint originally was filed with the prosecutor. Mr. Campos also filed a civil action against a number of government agencies believed to be responsible for his injuries arising from the shooting.

In his application [#1] filed with this court, Mr. Campos sought an order requiring the respondents to produce certain information for use in the criminal and civil proceedings in Peru. The information sought by Mr. Campos was listed in his Request for Production of Documents [#1-4] and his Notice of Rule 30(b)(6) Deposition Pursuant to 28 U.S.C. § 1782 [#1-3]. On March 16, 2015, the court granted the application in

part. *Order* [#22]. I ordered that the applicant may serve on the respondents a Request for Production of Documents and other information held by the respondents in the state of Colorado. *Order* [#22], p. 7. In addition, I ordered that the applicant may serve on the respondents a Notice of Rule 30(b)(6) deposition. *Id.* The scope of the requests of the applicant was limited to certain time periods and topics. *Order* [#22], pp. 5 - 7.

The applicant conducted a Rule 30(b)(6) deposition of Otto Sloane, the Security Director for the Americas for Newmont USA, Ltd. In his deposition, Mr. Sloane said his testimony was limited to information held by the Newmont entities in Colorado and only relevant documents held by Newmont in Colorado were produced. Mr. Sloane said also that Newmont employees responsible for security throughout the Americas are based in Nevada rather than Colorado. Mr. Sloane, for example, is based in Nevada. In his current motion, the applicant asks the court to order the respondents to produce all relevant documents held within the United States.

### **III. STANDARD OF REVIEW**

The applicant seeks this relief under 28 U.S.C. § 1782. Section 1782 provides that a district court may order a person found or residing within the district “to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign . . . tribunal.” The statute further requires that the order may be made “upon the application of any interested person.”

If the basic statutory requirements are satisfied, then four additional factors must be considered in exercising the discretion of the court under section 1782(a): (1) whether the person from whom discovery is sought is a participant in the foreign proceeding; (2) the receptivity of the foreign tribunal to federal-court assistance; (3)

whether the request conceals an attempt to circumvent foreign proof-gathering restrictions; and (4) whether the request is unduly intrusive or burdensome. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 254-56 (2004).

#### IV. ANALYSIS

Respondent Newmont Mining Corporation is headquartered in Greenwood Village, Colorado. The other two respondents are related entities. The requested discovery is sought for use in both a criminal and civil proceeding in Peru. Mr. Campos is an interested person in those proceedings. Thus, the basic statutory requirements are satisfied.

After consideration of the quadripartite *Intel Corp.* factors, I conclude further as follows. First, although there is no indication that the respondents are direct participants in the Peruvian proceedings, those proceedings concern events closely tied to the mining operations conducted by the respondents in Peru. Second, there is no indication that the Peruvian courts would not be receptive to relevant information gathered from the respondents in this federal district. Third, there is no indication that the applicant is using – or misusing – his application to evade proof gathering restrictions applicable in Peru.

Fourth and finally, I consider whether the request is unduly intrusive or burdensome. The respondents contend the requests of the applicant are unduly intrusive and burdensome. The respondents say they already have produced “thousands of documents” and should not be required to produce more. *Response* [#35], p. 5. Given the narrow focus of the time and topics on which the applicant has

been permitted to seek discovery, I conclude that requiring the respondents to produce any additional non-duplicative documents held by the respondents in Nevada would not be unduly intrusive or burdensome. The testimony of Mr. Sloane indicates that it is likely that one or more of the respondents have relevant documents in Nevada. There is no basis to conclude that the applicant should have been aware of that fact prior to the deposition of Mr. Sloane.

However, on the current record, I conclude that the applicant has not demonstrated a need to conduct a second Rule 30(b)(6) deposition of the respondents. Absent a demonstrated need for an additional deposition, I deny the motion of the applicant to conduct a second Rule 30(b)(6) deposition.

#### **V. CONCLUSION & ORDERS**

In sum, the considerations relevant to granting relief under 28 U.S.C. § 1782 are largely the same now as they were when the court issued its prior order [#22] granting such relief limited to documents held by the respondents in Colorado. After obtaining discovery as permitted by that order [#22], the applicant obtained information indicating that the respondents likely have relevant documents in Nevada. The order [#22] draws a narrow focus of the topics, place, and time which define the documents relevant to the discovery request of the applicant. Given that narrowly tailored focus, I conclude that requiring the respondents to produce any relevant non-duplicative documents held by the respondents in Nevada would not be unduly invasive or burdensome. However, on the current record, I conclude that the applicant has not demonstrated a need to conduct a second Rule 30(b)(6) deposition of a representative of the respondents.

**THEREFORE, IT IS ORDERED** as follows:

1. That the **Applicant Elmer Eduardo Campos-Alvarez's Motion for Supplemental Discovery Pursuant To 28 U.S.C. § 1782** [#32] is granted in part on the terms stated in this order;

2. That the applicant, Elmer Eduardo Campos-Álvarez, may serve on the respondents a Request for Production of Documents consistent with the request [#1-4] proposed by the applicant, but subject to the limitations imposed in the previous order [#22] of this court;

3. That all information sought in the request [#1-4] shall be limited to documents and other information held by the respondents, or any of them, in the district of Nevada;

4. That the eleven numbered items in the request [#1-4] are limited in scope as stated in the previous order [#22] of this court;

5. That otherwise, the **Applicant Elmer Eduardo Campos-Alvarez's Motion for Supplemental Discovery Pursuant To 28 U.S.C. § 1782** [#32] is denied, including the request of the applicant to conduct a second Rule 30(b)(6) deposition of the respondents;

6. That the timing and procedure applicable to the Request for Production of Documents under to 28 U.S.C. § 1782, as approved or limited in this order, shall be as provided in the Federal Rules of Civil Procedure generally, including Rules 30 and 34 specifically;

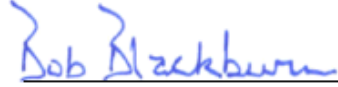
7. That because resolution of the present motion resolves, for the time being at least, all pending issues in this case, I direct that this action be closed administratively under D.C.COLO.LCivR 41.2; and

8. That under D.C.COLO.LCivR 41.2, the clerk of the court is directed to close

this civil action administratively, subject to reopening for good cause.

Dated September 27, 2016, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge