

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Alerte Congolaise pour l'Environnement et les
Droits de l'Homme

and

Actions pour la Promotion et Protection des
Peuples et Espèces Menacés

Petitioners,

v.

Winds Exploration and Production LLC,
Unite Oil and Gas Production LLC,

and

Franklin Ihekwoaba

Respondents.

Misc. Action No. 4:25-MC-02083

PETITIONERS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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I. INTRODUCTION

Petitioners Alerte Congolaise pour l'Environnement et les Droits de l'Homme and Actions pour la Promotion et Protection des Peuples et Espèces Menacés request an order compelling Respondents Winds Exploration and Production LLC, Unite Oil and Gas Production LLC, and Franklin Ihekwoaba to produce documents responsive to subpoenas served on November 18, 2025, which this Court authorized on November 3, 2025. *See* Order, Dkt. No. 3.

The subpoenas seek documents related to Respondents' participation in an auction for methane gas blocks in the Democratic Republic of the Congo (DRC). Despite Respondents – two Texas corporations and a U.S. citizen – indicating that they preferred to comply with the subpoena to avoid retaining U.S. counsel, and spending months conferring with Petitioners, Respondents produced only a handful of documents. Respondents did not produce any substantive bid documents, the primary subject of the discovery. Respondents' production is substantially out of compliance with the subpoenas.

Respondents assert that they lack possession, custody, or control over any other documents because Mr. Ihekwoaba's DRC company Winds Exploration and Production SARL (Winds DRC) possesses the bulk of the responsive documents. At first, Respondents stated that Winds DRC would operate the gas concession, but did not deny that corporate Respondents participated in, and won, the auction. Later, they stated that corporate Respondents participated as part of a consortium with other companies. After six months of conferrals, Mr. Ihekwoaba claimed for the first time at his deposition that corporate Respondents had nothing to do with the auction. But the documents Respondents produced and Mr. Ihekwoaba's own deposition testimony directly contradict that assertion. They demonstrate that Winds Exploration and Production LLC won the auction, or at very least participated, and has the practical ability to

access documents from any consortium members. Even if Winds Exploration and Production LLC did not participate in the auction, Mr. Ihekwoaba, who by his own account is CEO of Winds DRC and Winds Exploration and Production LLC and the manager of the bid, has the practical ability to access bid documents and thus has control over the documents and must produce them.

The subpoenas required compliance by December 18, but the Respondents did not comply. They did not even respond, just as they did not respond to Petitioners' original application for an order. Nearly a month after the production deadline, Respondents for the first time raised objections to the relevance of the requests, privilege, and confidentiality. These objections were untimely and, thus, waived. But even if not waived, they are still meritless. Respondents have failed to substantiate, and Mr. Ihekwoaba's deposition testimony in fact contradicts, their claims that documents are privileged because they contain trade secrets or uncompensated expert opinions; nor have they explained why a protective order would not resolve these issues. Their arguments that the requests are overbroad are impermissibly vague, and do not explain why Respondents have refused to produce *any* substantive bid documents.

Given Respondents' ongoing delay tactics (including their failure to secure U.S. counsel), and Petitioners' inability to encourage Respondents' compliance with the subpoena despite patient conferral, Petitioners seek clear direction from the Court ordering production of documents in Winds DRC's possession and providing strict deadlines to ensure an expeditious response. Petitioners further seek that the Court instruct Respondents that they may be held in contempt if they violate the Court's order.

II. BACKGROUND

In 2022, the DRC government put three methane gas blocks up for auction: the Makelele, Idjwi, and Lwandjofu blocks. Declaration of Olivier Ndoole, Dkt. 2-1 ¶ 6. The blocks are in

Lake Kivu, where layers of gas present a risk of a catastrophic explosion that could expose the millions of people living on the shores of the lake to fatal gases. *Id.* ¶¶ 18-19. The government awarded Winds US¹ the Idjwi block. Declaration of Lindsay Bailey (“Bailey Decl.”) Exs. 13, 14.

Petitioners, two DRC not-for-profit organizations, are preparing to file an administrative lawsuit against the DRC government challenging the conduct and outcome of the auction and the concessions awarded. *See* Mem. of Law, Dkt. 2 at 5-9. Investigative reports allege serious violations of DRC law associated with the auction process and the resulting awards. *Id.* These allegations include concerns with the fairness of the auction process, improper government conduct and interference, the government’s failure to conduct environmental impact studies and consultations with Indigenous communities required under Congolese law, and awarding winning bids to inexperienced companies that did not fulfill the auction requirements. *Id.* Through their Section 1782 application, Petitioners seek evidence from auction participants regarding the conduct of the auction and the concessions awarded, including bid materials received from or submitted to the DRC government and environmental assessments. *Id.* at 10-12.

On November 18, 2025, Petitioners served the subpoenas on Respondents. Return of Service Executed, Dkts. No. 11, 12, 13. The subpoenas provided Respondents thirty days to produce the requested documents. Request for Production (“RFP”), Dkt. 2-4 at 1. Respondents had actual notice of the subpoenas by November 11, when Mr. Ihekwoaba spoke with counsel for

¹ In 2018, Mr. Ihekwoaba formed Winds Exploration and Production, LLC. Bailey Decl. Ex. 8 at 53-55 (“Ihekwoaba Dep.”). In 2024 – after the auction – Mr. Ihekwoaba changed Winds Exploration and Production, LLC’s name to Unite Oil and Gas Production, LLC and formed a new LLC called Winds Exploration and Production, LLC. *Id.* at 58-59. Petitioners served both Unite and Winds LLC because it was not clear which LLC inherited the auction records and concession rights from the first Winds. While Mr. Ihekwoaba testified that Unite LLC is the successor to the first Winds, *id.* at 60:6-12, Winds LLC continues to refer to itself as the winner of the auction. *See, e.g., infra* at 14. Petitioners refer to the first Winds LLC, second Winds LLC, and Unite LLC as Winds US, except where the distinction is relevant.

Petitioners. Bailey Decl. ¶¶ 3-4. Yet Respondents did not raise objections, file a motion to quash, or produce documents by December 18, despite Petitioners' repeated contact. *Id.* ¶¶ 5-7.

On January 15, 2026, counsel for Respondents (an attorney in Nigeria, not here) first raised concerns regarding the subpoenas. Bailey Decl. ¶ 8, Ex. 1. Respondents produced objections only on February 27, *id.* ¶ 16, and did not produce a privilege log until May 6. *Id.* ¶ 25. Respondents' objections changed throughout Petitioners' ongoing efforts to confer, but at various times included assertions that: (1) bid documents were privileged, trade secrets and business confidential; (2) Mr. Ihekwoaba's DRC company, Winds DRC, possesses the documents; (3) the requests were overbroad and burdensome. *Id.* ¶¶ 18, 29, Exs. 1, 3, 5, 6, 7.

Despite making these objections, counsel for Respondents indicated that they were not admitted to practice law in the United States, and that Respondents wished to negotiate an agreement to avoid the cost of retaining U.S. counsel. Bailey Decl. ¶ 9. From January until May, the parties conferred over the objections and whether Respondents would produce any substantive documents. *Id.* ¶¶ 9-32. On February 27, Respondents produced twenty-six unique documents; these were mostly cover letters and public research, along with a few letters from the DRC government. *Id.* ¶ 16. Throughout March and April, Respondents implied that they would ask their lawyers or consultants to provide additional documents or produce bid materials under a stipulated protective order. *Id.* ¶¶ 18, 21, 27. But on May 13, they changed their position to state that they did not have possession over, and could not obtain, any additional documents. *Id.* ¶ 29. Petitioners agreed to depose Mr. Ihekwoaba on June 17, in advance of his travel to Nigeria. *Id.* ¶¶ 27, 33. After the deadline to read and sign his deposition passed, Petitioners once more attempted to confer with Respondents regarding additional production. *Id.* ¶ 34. Respondents stated they would "see" if they could access additional documents, but they would have to travel

to DRC. *Id.* ¶ 37. They did not respond to Petitioners’ request for a firmer commitment, and an explanation regarding the necessity of travel. *Id.* ¶¶ 38-39. Petitioners now move to compel Respondents to comply with the subpoenas.

III. LEGAL STANDARD

Congress enacted 28 U.S.C. § 1782 “to provide federal-court assistance in gathering evidence for use in foreign tribunals.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004). Section 1782(a) allows discovery “in accordance with the Federal Rules of Civil Procedure.” 28 U.S.C. § 1782(a); *accord Grupo Mexico SAB de CV v. SAS Asset Recovery, Ltd.*, 821 F.3d 573, 574 (5th Cir. 2016). The Court’s Order did not prescribe alternate procedures, so the Federal Rules of Civil Procedure apply. “A party may move to compel production of materials that are within the scope of discovery and have been requested but not received.” *Crosswhite v. Lexington Ins. Co.*, 321 F. App’x 365, 368 (5th Cir. 2009) (citing Fed. R. Civ. P. 37(a)). The party resisting discovery has the burden of proof to show that its obligation to comply with the subpoena is excused. *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). This includes the burden of establishing “that compliance with the subpoena would be unreasonable and oppressive,” *id.* (citations omitted), and substantiating any claim of privilege, *Enron Corp. Sav. Plan v. Hewitt Assocs., LLC*, 258 F.R.D. 149, 160 (S.D. Tex. 2009). “The remedy for failure to comply with a subpoena is to seek to hold the non-complying person in contempt of court under Federal Rule of Civil Procedure 45(f).” *Am. Fed’n of Musicians of the U.S. & Can. v. Skodam Films, LLC*, 313 F.R.D. 39, 57-58 (N.D. Tex. 2015) (citations omitted).

IV. ARGUMENT

A. Discovery is proper under Section 1782.

In granting Petitioners leave to serve Respondents with the subpoenas, this Court held that 28 U.S.C. § 1782 authorized the discovery and that discovery was appropriate under the *Intel* factors. Order, Dkt. 3. Respondents have cursorily claimed – without evidence – that this Court’s decision was incorrect because Applicants do not have standing to bring their claims, seek to “circumvent foreign proof-gathering restrictions,” and the “nature of the foreign tribunal . . . do[es] not favor the grant of the application.” *See, e.g.,* Bailey Decl. Ex. 11 at 3. If Respondents wish to challenge the Court’s decision, they should file a motion to quash, as the Court instructed. *See* Order, Dkt. 3 at n. 3. Even so, Petitioners also note that following full briefing of the issues, Judge Engelmayer in the Southern District of New York recently came to the same conclusion as this Court and granted Petitioners’ application to take similar discovery from Symbion Power LLC, the winner of the Makelele block. *See* Bailey Decl. Ex. 10, Order, *Alerte Congolaise Pour L’Environnement et les Droits de L’homme v. Symbion Power LLC*, No. 25 Misc. 480 (S.D.N.Y. July 27, 2026) (“Symbion Op.”).²

B. Respondents have failed to produce documents that are within the scope of the subpoenas.

Respondents have failed to produce nearly all the documents responsive to the requests. Requests 1, 2 and 3 seek “communication between Respondents and the DRC government,” “documents shared by the DRC government with Respondents,” and documents “that Respondents submitted, or were submitted on Respondents’ behalf, to the DRC government,” “related to the DRC Gas Auction.” RFP at 8-9. Respondents have not produced documents

² To the extent this matter is “related” pursuant to Local Rule 5.2, Applicants respectfully give the court and Respondents notice.

exchanged between the DRC government and auction participants, which their privilege log and the documents they produced reference, including:

- The French language call for tenders by the DRC government for the pre-selection phase, dated July 28, 2022;
- Application materials for the pre-selection phase;
- October 2022 letters from the DRC Government notifying Respondents about their results in the pre-selection phase;
- October 2022 letters of invitation, Cahiers Des Charges, and any other bid instructions;
- Financial, commercial, and technical tenders submitted ;
- January 2023 letters informing Respondents about their results in the bid phase; and
- Materials submitted or received after the DRC government awarded Winds US the Idjwi block, for instance, in connection with the negotiations for production sharing.

Request 4 seeks “[a]ll documents on the status of the incorporation in the U.S. and the DRC of Respondents, their subsidiaries, or their affiliates, and identities of their Directors and shareholders from 2022 until present.” RFP at 9. Respondents did not produce Winds DRC’s registration – despite Mr. Ihekwoaba’s statement that he had done so, Ihekwoaba Dep. 281:14-282:22, – or the operating agreements and shareholder lists of Winds DRC, Winds Exploration and Production LLC, and Unite Oil and Gas Production LLC.

Request seven seeks “[a]ll documents and communications related to site visits conducted by the DRC government or its designees as part of the DRC Gas Auction.” RFP at 9. Respondents have not produced any such documents, despite admitting that a site visit took place. Ihekwoaba Dep. 152-156.

Respondents’ concerns regarding relevance, possession, and confidentiality, discussed below, cannot justify the entirety of what is missing. For example, Winds US submitted bids for three blocks: Lwandjofu, Idjwi, and Makelele. Respondents produced a few cover letters for their Idjwi bid, and instructions for the Makelele bid, but have not explained why corresponding documents for other blocks should be protected. For many documents, Respondents produced English translations, but not the French original as received from or submitted to the DRC

government, and have not explained why the French original merits different treatment. *See e.g.*, Ihekwoaba Dep. 130:17-131:7 (describing translation).

C. Respondents have control over the bid documents.

Respondents claim that they do not possess bid documents and, thus, are not obligated to produce them. But Respondents' production obligations, as set out in Rule 45, include documents in Respondents' "possession, custody, or control." Fed. R. Civ. P. 45(a)(1)(A)(iii). Control extends beyond possession and includes either the "legal right" or "practical ability" to obtain them from third parties. *See, e.g., Jefferson v. Delphi Auto. Sys. LLC*, 2015 U.S. Dist. LEXIS 165436, *8 (S.D. Tex. Dec. 10, 2015). Respondents have control of bid documents for at least three reasons. First, as the CEO of Winds DRC and project lead, Mr. Ihekwoaba has the practical ability to access Winds DRC's bid documents. Second, Winds US has the practical ability to retrieve documents from a bid it participated in. Attempts to evade production by eschewing Winds US's participation in the auction fail based on the documentary evidence. Finally, Respondents must produce documents in the possession of their consultants and employees.

1. Mr. Ihekwoaba has control over the bid documents due to his role in Winds DRC and participation in the bid.

Mr. Ihekwoaba has the practical ability to retrieve documents from Winds DRC because he is CEO of Winds DRC and leader of the bid consortium. Courts have regularly ordered executives, directors, or founders to produce documents from corporations that they manage. Applying Section 1782, one Texas district court held that a President and CEO must produce documents held by his company, because an executive has the practical ability to obtain documents held by their company. *In re Oasis Focus Fund LP*, 2023 U.S. Dist. LEXIS 171930, at *13-19 (W.D. Tex. Sep. 26, 2023), *report and recommendation adopted*, 2023 U.S. Dist. LEXIS 196722 (W.D. Tex. Nov. 2, 2023). Noting that control is "broadly construed," another

Texas district court ordered an employee to produce documents held by a corporation where the individual “has the ability to enter into contracts on behalf of [the corporation], has access to its bank accounts, and intimate knowledge of its ongoing business dealings,” “identified himself as its ‘Founder’ under his signature,” sent “invoices on behalf,” and third parties described the corporation as the individual’s team. *See MWK Recruiting, Inc. v. Jowers*, 2020 U.S. Dist. LEXIS 73265, at *5-9 (W.D. Tex. Apr. 27, 2020) (citations omitted). Mr. Ihekwoaba’s testimony establishes that he similarly had extensive control over Winds DRC and the bid process.

Mr. Ihekwoaba is the Chief Executive Officer of Winds DRC. Ihekwoaba Dep. 148:24; 149:1; 202:24-203:1; 232:14-16; 256:3-4. He is one of only five owners of Winds DRC. *Id.* at 86-89. He will sign Winds DRC’s employees’ paychecks. *Id.* at 103:18-20. He is the only one who contributed funds to the Winds DRC bank account. *Id.* at 94:2-6.

He was “the lead for the entire project.” Ihekwoaba Dep. 211:22; *see also id.* at 172:13-12 (self-identifying as “the team leader”). As the “manager,” his job was “to organize the project.” *Id.* at 32:12-14. He “put together” the team. *Id.* at 82:21-83:5; *see also id.* at 89:7-11 (he brought “together the consortium”); *id.* at 116:24-25 (he was the consortium “coordinator”). He oversaw critical parts of the project, including “oversight of the money” and “rais[ing] funding to make the project work.” *Id.* at 32:13-15, 180:21-23. He invested “over \$300,000” of his own money in the project. *Id.* at 92:4-6. His name appears on credit applications for \$50 million. *Id.* at 143:16-145:23. While he delegated some technical aspects of the project, his 25 years of gas exploitation experience was what made the bid team qualified. *Id.* at 142:14-19. He signed critical bid materials, including the financial offer cover letter, the technical offer cover letter, and the letter committing that Winds would not engage in corruption. *Id.* at 181:14-17, 207:13-22, 211:17-24. He “ha[d] to sign” letters because he was “the coordinator,” *id.* at 192:20-21, the

lead, *id.* at 211:17-24, and he “represented the group.” *Id.* at 234:6-7. There was “no question” of “one of the other group members potentially signing these letters.” *Id.* at 234:8-10. The DRC government addressed letters for Winds DRC to Mr. Ihekwoaba. *Id.* at 159:25-160:2, 242:25-243:1, 243:20-22. This was “usual.” *Id.* at 242:25-243:1. None of the documents produced were signed by or addressed to any other individual.

Mr. Ihekwoaba represented Winds in contract negotiations, stakeholder meetings, the signing of the production sharing agreement, the awards ceremony, and meetings with the DRC Minister of Hydrocarbons. Ihekwoaba Dep. 46:15-16, 194:9-17, 216:3-5, 249:11-21, 257:23-258:16. Local charities reached out to Mr. Ihekwoaba as the bid representative. *Id.* at 44:5-45:13. He communicated with journalists regarding their concerns about the bid. *Id.* at 261:10-262:11.

Mr. Ihekwoaba admits that he possessed some bid documents, *see, e.g.*, Ihekwoaba Dep. 30:4-10, but claims that many were lost when his phone was corrupted. *Id.* at 30:22-31:4. He admitted that he had the power to, and did in fact, search some of Winds DRC’s files, *id.* at 53:7-21, and demand documents from Winds DRC’s local representative. *Id.* at 126:1-23. Mr. Ihekwoaba also claimed that he asked Winds’ lawyer for files, and that the reason she did not produce them was that she was travelling – and he never followed up with her after contacting her in January. *Id.* at 33-34. This underscores his right to see and handle Winds DRC documents.

Mr. Ihekwoaba indicated at his deposition that Winds DRC members have refused to share documents with him for the purposes of the subpoena. Ihekwoaba Dep. 36:4-18-38:4. But Petitioners are not asking for personal documents from these individuals. Petitioners have requested only bid documents created by, or on behalf of, a company over which Mr. Ihekwoaba serves as CEO, and that were shared with the DRC government on behalf of that company. Mr. Ihekwoaba has not identified a confidentiality agreement that prevents him from accessing

Winds DRC documents. Moreover, he has not explained how a protective order could not address any concerns that these documents contain sensitive bid materials.

Even if Mr. Ihekwoaba does not have access to every bid document, that does not explain shortcomings in the production. For instance, Respondents did not produce documents that Mr. Ihekwoaba would have created, such as commitments regarding his access to credit, Ihekwoaba Dep. 143:16-145:23, or discussed in meetings, such as the letter providing Winds' score for the Idjwi block. *Id.* at 223:1-4. Indeed, Mr. Ihekwoaba stated (incorrectly) that he *did* produce Winds DRC's registration, *Id.* at 282:23-25, suggesting that there was no reason to withhold it.

2. Winds US has control over bid documents held by Winds DRC and other consortium members.

As a principal participant in the bid, Winds US has the practical ability to access bid documents held by Winds DRC and any of its other business partners. Judge Engelmayer recently held that Winds' fellow auction participant Symbion has "control over its affiliate and principal business partner," its local subsidiary Red. Symbion Op. 14-15. Other Courts have ordered corporations to produce materials possessed by another corporation, where the corporations share ownership, directors, employees, or officers, collaborate in the ordinary course of business, exchange documents regularly, and/or benefit from and were involved in the underlying transaction. *See Liion v. Vertiv Grp. Corp.*, 2019 U.S. Dist. LEXIS 241658, at *9 (W.D. Tex. July 30, 2019) (holding discovery is appropriate where "there is a close working relationship on a common transaction and the subsidiary could easily obtain the documents when it is in its interest to do so") (citations omitted); *Hoffman v. L&M Arts*, 2013 U.S. Dist. LEXIS 209233, at *9 (N.D. Tex. Oct. 2, 2013) (granting discovery where corporations share a principal and manager, the corporations "exchanged documents in the ordinary course of business," did

not keep their files wholly separate, and “played a large role in” the dispute); *Dugas v. Mercedes-Benz USA, LLC*, 2014 U.S. Dist. LEXIS 107787, at *8-10, 15 (W.D. La. Aug. 5, 2014).

At the eleventh-hour, Respondents claimed that Winds US had no role in the auction, but this bare assertion cannot be reconciled with the evidence *that Winds US won the auction*. At the very least, Winds US was an active participant in the auction. The joint venture and the affiliation between Winds US and Winds DRC – sharing a director, management, staff, and a name – gives Winds US the practical ability to access Winds DRC’s documents.

a. Winds US participated in the auction.

Respondents’ claims have shifted throughout our efforts to confer, distancing Winds US from an active auction participant to an irrelevant entity, mentioned only due to clerical errors. At first, Respondents’ counsel claimed that consultants, lawyers, and Winds DRC may possess some documents, but admitted that “our clients” are “the awardee of the Concession.” Bailey Decl. Ex. 1 at 1. Respondents stated that while “companies from anywhere” (like Winds US) “could apply,” Winds DRC would operate the concession because “winning bidders would be required to own and operate the asset with locally registered companies.” *Id.* Ex. 3 at 3. Yet, the DRC government awarded all three of the blocks to North American companies; so the applicant and winner, it turns out, need not be a DRC company after all.³ When Petitioners pointed out that Winds US has control over bid documents by virtue of its participation in the bid, Respondents said that the bid consortium merely “adopted the name of the technical adviser,” Winds US, *id.* Ex. 7 at 3, and Winds US “did not have any role other than Mr[.] Frank Ihekwoaba using the name of his US company.” *Id.* ¶ 29. At his deposition, Mr. Ihekwoaba claimed for the first time

³ See *Congo awards Lake Kivu gas blocks to U.S. and Canadian producers*, Reuters (Jan. 17, 2023), <https://www.reuters.com/world/africa/congo-awards-lake-kivu-gas-blocks-us-canadian-producers-2023-01-17/> (emphasis added to title)

that *only* Winds DRC participated in the auction, and Winds US had nothing to do with the venture. Ihekwoaba Dep. 149-151, 160, 204:17-25, 244:6-18. Mr. Ihekwoaba’s explanation – that any mention of Winds US was a recurring, years-long clerical error on multi-million dollar bid documents – beggars belief. Together, public documents and the documents Respondents produced demonstrate that Winds US applied for the bid and was awarded the concession, and at the very least was an active participant in the bid process. And indeed, weeks after the deposition, Respondents wrote that Winds US is “a company involved in the DRC Federal Government procurement process.” Bailey Decl. Ex. 11 at 7.

Winds DRC was registered on August 19, 2022, Bailey Decl. ¶ 29, nearly two months before any bid documents were due. Yet Winds DRC’s name and address do not appear on any of the paperwork that Respondents produced, nor on any of the publicly available material. Instead, the Ministerial Decree awarding the Idjwi block grants it to “*the company* Winds Exploration and Production LLC,” not Winds DRC, or a consortium. *Id.* Ex. 13 at 2. Letters to and from the government exclusively use Winds US’s name and letterhead. Ihekwoaba Dep. 152:14-18, 159:22-24, 212:16-22, 209:18-22. The bid material does not name any other consortium members. *Id.* at 151-152, 160:3-5, 212:23-213:2. The bid documents – including the award – also use Mr. Ihekwoaba and Winds US’s Texas address. *Id.* at 60:19-20, 80:25-81:1, 147, 159:25-160:2; 224:19-225:3; Bailey Decl. Ex. 13. Mr. Ihekwoaba confirmed that Winds DRC’s “only” address is in DRC, Ihekwoaba Dep. 89:12-19, 236:16-18, “not” Texas. *Id.* at 99:11-12.

Mr. Ihekwoaba stated that the bid team included Winds US’s name, letterhead and address on several submissions to the DRC government as a clerical error, Ihekwoaba Dep. 149-151, 160, 204:17-25, 244:6-18, caused in part because the names were similar (Winds US is an LLC and Winds DRC is a SARL), and Winds DRC was new. *Id.* at 226:1-16. But Mr.

Ihekwoaba's claim that "[a]s soon as Winds [DRC] was formed we started using Winds [DRC]" on bid documents, *id.* at 243:11-16, is simply false. The only evidence of Winds DRC that Mr. Ihekwoaba identified is letterhead that simply says Winds. *Id.* at 232:19-233:4. In October 2024, two years after Winds DRC was established, his team was *still* using Winds LLC letterhead. *Id.* at 252:22-253:10. And in January 2023, Winds US posted on its website that "Winds Exploration and Production LLC based in Houston was awarded" the concession, and that they would use expertise from prior operations in Utah in the DRC.⁴ At his deposition, Mr. Ihekwoaba stated that this was a mistake that had been fixed. *Id.* at 229:20-24. The next day, Winds US's website – which had been reactivated on a new domain – still stated that "Houston's Winds E&P LLC won the concession."⁵ Media reports, which quote Winds, also indicate that Houston-based Winds US was awarded the Idjwi block.⁶

Mr. Ihekwoaba further claims that the DRC government erroneously copied Winds US's name from a business card and failed to change the name to the correct entity, even on the final award, despite being asked to. Ihekwoaba Dep. 224:19–226:16. Mr. Ihekwoaba suggested that the same issue was prevalent in other bids. *Id.* at 224:19–225:3. But the DRC government knew how to recognize a consortium and include a U.S. company and its DRC affiliate in official decrees. Another award document noted that the government selected "the Symbion Power &

⁴ Winds E&P, Latest News, Internet Archive WayBack Machine, <https://web.archive.org/web/20250718220111/https://www.windsexploration.com/blog> (captured July 18, 2025). By the time of the deposition, Winds' website was no longer active.

⁵ Uzo Ihekwoaba, *Democratic Republic of Congo (DRC) Awards Winds E&P Largest Methane-Filled Gas Block on Lake Kivu*, Winds Exp (Jan. 16, 2023), <https://web.archive.org/web/20260619000202/https://www.windsexp.com/post/lakekivu> (captured June 19, 2026). The website is now offline. Bailey Decl. ¶ 44.

⁶ See, e.g., Michael J. Kavanagh, *US Gas Producer Sees \$500 Million Investment in Congo Methane*, Bloomberg News (Feb. 17, 2023), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/X20FG688000000>.

Red *Consortium*,” Bailey Decl. Ex. 16 (emphasis added), and the DRC government publicly announced the “companies/Consortium” it had selected. *Id.* Ex. 14.

While early mistakes by the bid team or DRC government could be understandable, it is implausible that both parties would repeatedly use the wrong name and address – including on legal decrees – for an eighty-million-dollar bid. As Mr. Ihekwoaba stated in response to a question about why consortium members were not listed on letters from the government, “the government only wants to see one name, the entity that is being used to acquire the assets.” Ihekwoaba Dep. 206:23–24. There is only one name on the documents: Winds US.

Even accepting Mr. Ihekwoaba’s facially implausible claims that Winds DRC was the true correspondent and ultimate recipient of the Idjwi block, that would not mean Winds US did not participate in the auction at all. Respondents have described Winds US as a “technical partner” in the bid. *Id.* Ex. 3 at 3. Winds DRC could not meet the auction requirements alone; it needed a technical partner. Bidders had to submit three years of financial records, and evidence of past work in oil and gas. Ndoole Decl. ¶ 11d–f. This would be impossible for an LLC that was less than two months old. Thus, Winds DRC needed Winds US to qualify for and ultimately win the bid. Mr. Ihekwoaba admitted that to comply with the auction requirements he had to present Winds US’s records, including balance sheets and evidence of Winds US’s experience in oil and gas, and a CV that “lists [Mr. Ihekwoaba] as CEO of Winds LLC.” Ihekwoaba Dep. 139–142, 174:24–25. DRC government representatives visited Houston and Utah to verify Winds US’s experience. *Id.* at 153–154. The DRC government found allegations that Winds US has not paid its taxes relevant to the Winds bid. *Id.* at 263:15–22. Together, this *is* evidence of participation in the auction by Winds US, which gives Winds US control over the auction materials.

b. Winds DRC and Winds US are affiliated.

Winds DRC and Winds US are affiliated companies, which indicates that Winds US has the practical ability to access documents from Winds DRC. Winds US and Winds DRC share leadership, personnel, and members. Mr. Ihekwoaba is the CEO of both. Ihekwoaba Dep. 174:25, 148:24–25. He was the majority owner of Winds US at the time of the auction, *id.* at 67:1–2, and one of five owners of Winds DRC. *Id.* at 86–89. The organizations also share other staff. Victor Ogoke, for example, was the GM of Winds US, *id.* at 230:17–18, and is technical lead in Winds DRC. *Id.* at 230:19–20.

If staff did mix up Winds US and Winds DRC, that is further evidence the companies are related. Mr. Ihekwoaba stated: “the transposition of the names and all of that stuff, we never took it seriously.” Ihekwoaba Dep. 227:15–16. Surely a company would take seriously a government awarding their multi-million-dollar concession to an unrelated corporation. Their lawyers said, “not to worry,” *id.* at 232:5–6, because the corporations were not independent. Even if only Winds DRC holds relevant documents, which is doubtful, Winds US should have the right or practical ability to obtain documents related to the bid they participated in from a related corporation and thus has control over those documents.

3. Respondents have custody or control over bid documents held by consultants or employees.

Respondents have asserted that communications with the DRC government were conducted by lawyers or other representatives. Respondents have custody or control over documents held by their employees or consultants. *See, e.g., Duarte v. St. Paul Fire & Marine Ins. Co.*, 2015 U.S. Dist. LEXIS 161254, at *16 (W.D. Tex. Sept. 25, 2015). Respondents must produce responsive documents held by their lawyers or consultants.

D. Respondents' objections are untimely and without merit.

1. Respondents waived their objections by failing to timely raise them.

Any objections to a subpoena must be served “before the earlier of the time specified for compliance or 14 days after the subpoena is served.” Fed. R. Civ. P. 45(d)(2)(B). “The failure to serve written objections to a subpoena within the time specified by Rule [45(d)(2)(B)] typically constitutes a waiver of such objections,” as does failing to file a timely motion to quash. *Isenberg v. Chase Bank USA, N.A.*, 661 F. Supp. 2d 627, 629 (N.D. Tex. 2009); accord *La. Generating, LLC v. Ill. Union Ins. Co.*, 2011 WL 6259052, at *2 (M.D. La. Dec. 14, 2011) (“Courts within the Fifth Circuit have consistently held that failure to serve timely objections to a Rule 45 subpoena generally results in a waiver of all grounds for objection, including privilege.”); *In re Grupo Mex. Sab De CV*, 2015 U.S. Dist. LEXIS 177694, at *8 (N.D. Tex. Mar. 10, 2015).

The response deadline on the subpoena was December 18, 2025, thirty days after service. Respondents failed to file objections before December 18. That Mr. Ihekwoaba called Petitioners' counsel, Bailey Decl. ¶¶ 3–4, indicates that Respondents had notice of the subpoenas. Respondents did not raise any issues or meaningfully respond to Petitioners' repeated attempts at outreach until January 15, 2026. *Id.* ¶ 8. Respondents have not attempted to show good cause or unusual circumstances that justify their delay. Respondents' failure to raise any issues whatsoever in advance of the deadline – let alone issue formal objections or move to quash the subpoena – means any objections are untimely and thus waived.

2. Respondents cannot rely on general boilerplate objections.

Respondents provide “general objections,” including an objection “to each and every request to the extent it is overly broad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents not relevant to any

claim or defence [sic] in this action.” Bailey Decl. Ex. 3 (“Objections”) at 4.⁷ “General or boilerplate objections are invalid, and objections to discovery must be made with specificity, and the responding party has the obligation to explain and support its objections.” *Veroblue Farms United States, Inc. v. Wulf*, 345 F.R.D. 406, 419 (N.D. Tex. 2021). Nearly all of Respondents’ “objections are general or boilerplate and are thus waived.” *In re Xiaomi Tech. Neth. B.V.*, 2025 U.S. Dist. LEXIS 215671, at *6–7 (E.D. Tex. Nov. 3, 2025). Respondents do not attempt to justify withholding specific documents based on specific concerns or provide responses that enable Petitioners to understand the full scope of what Respondents are withholding and why.

3. Petitioners’ requests are relevant and narrowly tailored, not overly broad or unduly burdensome.

The scope of discovery available through a Fed. R. Civ. P. 45 subpoena falls within the “broad scope of relevance as defined under Fed. R. Civ. P. 26(b)(1).” *SEC v. Brady*, 238 F.R.D. 429, 437 (N.D. Tex. 2006). Under Rule 26(b)(1), parties are entitled to discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense,” subject to the requirement that the request is “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). This standard “has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978); *In re Application HydroDive Nig, Ltd.*, 2013 U.S. Dist. LEXIS 200238, at *7–8 (S.D. Tex. May 29, 2013). Discovery under this permissive standard “should be considered relevant if there is ‘any possibility’ that the information sought may be relevant to the claim or defense of any party.” *SEC*, 238 F.R.D. at 437 (citing *Merrill v. Waffle House, Inc.*, 227 F.R.D. 467, 470 (N.D. Tex.

⁷ While Respondents suggested that admissibility is the standard, Fed. R. Civ. P. 26(b)(1) provides that information “need not be admissible in evidence to be discoverable.”

2005)). Accordingly, “[u]nless it is clear that the information sought can have no possible bearing on the claim or defense of a party, the request for discovery should be allowed.” *Id.* Respondents have not provided specificity regarding their concerns over relevance, nor have they identified any potentially responsive documents that are not relevant to the claims. *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *Karahogitis v. TPUSA, Inc.*, 2025 U.S. Dist. LEXIS 272477, at *3–4 (N.D. Tex. May 2, 2025). Judge Engelmayer concluded that the only tailoring required for near-identical requests was to exclude “records and personnel information *wholly unrelated* to the 2022 auction.” *Symbion Op.* at 19 (emphasis added). Respondents are willing to similarly limit requests 1 and 4 here to exclude wholly unrelated records and personnel information.

The party opposing the production has the burden of proving “that compliance with the subpoena would be unreasonable and oppressive” in such a way that it overrides the moving party’s “need for the documents and the nature and importance of the litigation.” *Wiwa*, 392 F.3d at 818 (internal quotation marks omitted). Respondents have not identified any specific burden that is not proportional to the needs of the case. Respondents claim they need to travel to the DRC to retrieve documents, Bailey Decl. Ex. 11, but have not responded to Petitioners’ request to explain why travel to the DRC is necessary when local agents had previously sent materials to Respondents by email and WhatsApp. *Id.* ¶¶ 18, 21, 27, Ex. 11. Electronically stored information is accessible from the United States. *See Banco Mercantil de Norte, S.A. v. Paramo*, 2024 U.S. Dist. LEXIS 215848, at *8 (S.D. Tex. Nov. 27, 2024).

Finally, Respondents incorrectly claim that the Court lacks authority to grant discovery of documents held in the DRC. After all, § 1782 undoubtedly allows extraterritorial discovery. *See*

id.; *In re Oasis Focus Fund LP*, 2023 U.S. Dist. LEXIS 171930, at *8 (W.D. Tex. Sept. 26, 2023); *In re del Valle Ruiz*, 939 F.3d 520, 533 (2d Cir. 2019).

4. Respondents’ relevancy and burden contentions are meritless.

Request 1: All communication between Respondents and the DRC government from 2020 to present, including communications where Respondents and/or the DRC government are copied but not the sender.

Respondents “object to this request as overly broad in time and scope, unduly burdensome . . . not limited to matters relevant to the claims or defenses,” and “not proportional to the needs of the case.” Objections at 5-6. This request is not overbroad in time and scope, as it is limited to communications with the DRC government within a reasonable timeframe. *See In re JSC BTA Bank*, 577 F. Supp. 3d 262, 268 (S.D.N.Y. 2021) (request seeking all documents in a narrow category not unduly intrusive or burdensome). Petitioners’ allegations include improper government conduct, thus making communication with the government directly relevant to the claims. The six-year range includes the period from when Petitioners first heard reports about the auction in 2020 through the bidding process itself and subsequent negotiations, which are ongoing. *Banco Mercantil*, 2024 U.S. Dist. LEXIS 215848, at *26–27; *c.f. Hill v. Dillard’s, Inc.*, No. 00-2523-JWL, 2002 U.S. Dist. LEXIS 981, at *17 (D. Kan. Jan. 21, 2002) (Six year time range starting before and ending after alleged employment discrimination not unduly burdensome). Respondents also say providing communications on which they were copied “is unduly burdensome and unlikely to yield relevant information.” Objections at 6. They have not identified any specific burden of producing such communications. Communications on which they were copied could prove relevant to the conduct of the auction. The Court should compel production of all communication between Respondents and the DRC government from 2020 to present, including communications where Respondents were copied.

Request 2: All documents shared by the DRC government with Respondents relating to the DRC Gas Auction.

“Respondents object to this request as overly broad and duplicative to the extent it seeks publicly available documents or documents accessible to the Applicants from the DRC Government.” Objections at 7. Respondents have not substantiated their assertion that responsive documents are public, or identified which documents they refer to. Moreover, relevant information is discoverable even if it is available through another means. *In re Xiaomi Tech.*, 2025 U.S. Dist. LEXIS 215671, at *18-19; *see also Venequip, S.A. v. Mustang Mach. Co.*, 2022 U.S. Dist. LEXIS 155822, at *5 (S.D. Tex. 2022) (rejecting exhaustion requirement).

Respondents offered to produce documents “relating specifically to the Idjwi Block.” Objections at 8. But that would not cover the other two blocks – Lwandjofu and Makelele – on which they also submitted bids. *Ihekwoaba Dep.* 162:2-7. Respondents cannot modify the scope of this request to include only one block. All three are relevant to Petitioners’ claims, and the Court should order Respondents to produce documents relating to all three blocks.

Request 4: All documents on the status of the incorporation in the U.S. and the DRC of Respondents, their subsidiaries, or their affiliates, and identities of their Directors and shareholders from 2022 until present.

In response to Respondents’ argument that this request sought information “regarding subsidiaries and affiliates not at issue,” Objections at 17, Petitioners offered to modify the request to exclude subsidiaries and affiliates not involved in the auction. *Bailey Decl.* Ex. 4 at 7. Respondents did not respond to this offer. The Court should compel production of Winds US and Winds DRC’s corporate information.

Request 7: All documents and communications related to site visits conducted by the DRC government or its designees as part of the DRC Gas Auction.

Respondents assert that this request is “vague and overly broad to the extent it seeks all communications without limitations.” Objections at 20. The request is limited to site visits conducted as part of the DRC Gas Auction, which Mr. Ihekwoaba admitted exist during his deposition. Ihekwoaba Dep. 153:1-156:2. The Court should compel their production.

Request 8: All documents and communication from, or discussing, meetings or communication with the DRC government.

“Respondents object to this request as it is facially overbroad, duplicative of Request No.1, and not limited in time and subject matter.” Objections at 21. Petitioners offered to limit Request 8 to documents from 2020 to the present. *Id.* Ex. 4 at 8. The subject matter of this request is not entirely duplicative of Request 1, as it includes internal Winds documents and communications that discuss meetings or communication with the DRC government. It also covers documents obtained from meetings with the DRC Government. The Court should compel their production.

5. Respondents have not substantiated their privilege claims.

Respondents listed two types of privileged information on their log: “trade secrets and other confidential research development, or commercial information,” and “unretained expert’s opinion and information that does not describe specific occurrences in dispute and results from the expert’s study.” Bailey Decl. Ex. 6 at 3.⁸ Respondents have simply copied Fed. R. Civ. P.

⁸ Respondents raised attorney-client and work-product privilege and “sovereign confidentiality considerations.” Bailey Decl. Ex. 3 at 4-6. Because Respondents failed to list these privileges in their log, Petitioners cannot ascertain what material may be privileged. But Respondents’ general assertions appear unfounded. For instance, Respondents’ communications “between the lawyer . . . and the DRC Government,” *id.* at 5, are not privileged; the government is not the lawyer’s client, *see* Ihekwoaba Dep. 239-40 (describing how lawyer acted for Winds DRC), and privilege applies only to communications between a lawyer and a client. *See United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997). Moreover, “[t]here is no presumption that a company’s communications with counsel are privileged.” *See EEOC v. BDO USA, L.L.P.*, 876 F.3d 690, 696 (5th Cir. 2017). And Respondents cite no authority for “sovereign confidentiality.”

45(d)(3)(B), which “permit[s]” courts to quash or modify a subpoena. This does not even *require* the court to quash the subpoena, let alone establish a privilege. Further, “a privilege log’s description of each document and its contents must provide sufficient information to permit courts and other parties to test the merits of the privilege claim.” *EEOC*, 876 F.3d at 697 (internal citations omitted). Respondents’ log fails to do so.

a. Trade secrets and other business confidential information.

Respondents have failed to substantiate their claims that the bids contain confidential information, and their concerns can easily be addressed by a protective order. “A party seeking to protect the disclosure of sensitive information must first establish the confidential nature of the requested discovery.” *Acme Truck Line v. Gardner*, 2014 U.S. Dist. LEXIS 164849, at *4 (S.D. Tex. Nov. 25, 2014); *see also In re Subpoena of Americredit Fin. Servs.*, 2008 U.S. Dist. LEXIS 49770, at *3 (N.D. Tex. June 30, 2008) (holding Respondents bear the burden of establishing that documents contain trade secrets). “For good cause to exist, the party seeking to limit the disclosure must make more than conclusory allegations that specific prejudice or harm will result if no protective order is granted.” *Acme Truck Line*, 2014 U.S. Dist. LEXIS 164849, at *4-5. Respondents have not met this burden.

Respondents have not substantiated their claim that the entirety of the bid documents are confidential business information and that disclosure would be harmful. Bailey Decl. Ex. 6 at 3. At least a substantial portion of the information that formed part of the bids – like employees’ resumes – are not trade secrets or confidential business information. Mr. Ihekwoaba stated that the technology his consortium planned to use was not “complex,” unique, and or in any way specialized, and “many many” companies have this expertise. Ihekwoaba Dep. 108:1-110:20. This undermines any claim that the bid contains highly technical trade secrets.

Likewise, Respondents provide no reason beyond a vague reference to “privacy rights” to limit the corporate information produced – such as identities of shareholders or corporate governance agreements – to publicly available information. Objections at 18. To the extent shares are held by individuals, Respondents have not identified any law granting them privacy rights in the jurisdictions where the companies reside.

Even if Respondents make such a showing, “[a] confidentiality or proprietary information claim may be a proper ground to seek a protective order, but it generally is not a valid objection for withholding discovery altogether.” *In re Xiaomi Tech.*, 2025 U.S. Dist. LEXIS 215671, at *12 (citations omitted). A protective order “is the proper response.” *Symbion Op.* at 20. Petitioners offered to negotiate the terms of a protective order. Bailey Decl. ¶¶ 22, 26, 29. Respondents have not disputed that a protective order would satisfy their concerns. Indeed, when asked whether Petitioners’ access to bid documents would “pose a risk” to consortium members, Mr. Ihekwoaba said he does not “have any reason to believe that it will.” Ihekwoaba Dep. 52:23-53:6.

b. Unretained experts

Courts may quash a subpoena that requires “disclosing an unretained expert’s opinion or information that does not describe the specific occurrences in dispute and results from the expert’s study that was not requested by a party.” Fed. R. Civ. P. 45(d)(3)(B)(ii). Respondents never moved to quash the subpoena in any respect (and certainly not on these grounds), and to this day they have not identified who the expert is and what opinion or information they provided. Respondents raised this “privilege” for bid documents that they submitted to the DRC government; Bailey Decl. Ex. 6 at 3, any expert opinion or information included in the bid documents would describe the specific occurrences in dispute here. It is likely that any expert’s

study that was not publicly available was paid for by Respondents' bid consortium, given they included it in their bid, and thus is not from an "unretained expert."

This provision aims to address the "growing problem" of "the use of subpoenas to compel the giving of evidence and information by unretained experts," which may "threaten the intellectual property of experts denied the opportunity to bargain for the value of their services." Rule 45(c)(3)(B)(ii) Advisory Committee Notes (1991). That is simply not the case here. Petitioners have no need for their own expert assessment of Respondents' bid. Petitioners' case requires the materials that were before the DRC government when it made its decision. Any expert opinion or information from the bid would "provide factual, documentary evidence," regarding the bid process, not "expert witness" evidence. *See Talk-N-Surf Communs., Inc. v. Gualtieri*, 2012 U.S. Dist. LEXIS 135164, at *3 (S.D. Miss. Sep. 21, 2012).

V. CONCLUSION

Petitioners have engaged with Respondents in good faith, respecting that they lack U.S. counsel. Respondents have repeatedly delayed conferral and production, which in turn delays critical litigation in the DRC. Petitioners respectfully request that the Court order Respondents to comply with their obligation to produce documents, including by producing the documents listed in Part IV(B), and instruct them that failure to comply with the court-ordered subpoena could lead to contempt sanctions.

Dated: August 18, 2026

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that, prior to filing this motion, I conferred with counsel for Respondents in an attempt to resolve the issues addressed in this motion, as set out in the attached declaration.

Date: August 18, 2026

/s/Lindsay A. Bailey
Lindsay A. Bailey

CERTIFICATE OF SERVICE

I certify that on August 18, 2026, a copy of this document was served by e-mail on counsel for Respondents at precious.slspfirm@gmail.com, in accordance with Respondents' written consent to receive service at this e-mail address.

Date: August 18, 2026

/s/ Lindsay A. Bailey
Lindsay A. Bailey