

**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

Applicants,

v.

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

Respondents.

Civil Action No. 25-mc-2083

**MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782**

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In 2022, the Democratic Republic of the Congo (DRC) government put three methane gas blocks up for auction. The blocks are in Lake Kivu, a unique lake whose 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. The region has also been a hotbed of conflict for decades. Despite widespread and vocal opposition, the government proceeded with the auction and awarded the blocks to three companies, including the company that was known as Winds Exploration and Production, LLC.¹

Members of the public, including Applicants, along with reporting in the media, have alleged serious violations of Congolese law associated with the auction process and the resulting awards. These allegations include concerns with the fairness of the auction process, improper government conduct and interference, and the government's failure to conduct environmental and social due diligence required under Congolese law, particularly given the risk that the volatile Lake Kivu might explode.

Applicants Alerte Congolaise pour l'Environnement et les Droits de l'Homme (ACEDH)² and Actions pour la Promotion et Protection des Peuples et Espèces Menacés (APEM),³ two not-for-profit organizations based in the DRC, are preparing to file an administrative lawsuit against the Congolese government. The lawsuit will challenge the conduct and outcome of the auction and the concessions awarded, including the concession awarded to Winds Exploration and Production, LLC. Applicants believe that the government violated DRC

¹ See *infra* 3-4 (discussion of Winds Exploration and Production, LLC change of name to Unite Oil and Gas Production LLC followed by the formation of a new company with the Winds name).

² In English, Congolese Alert for the Environment and Human Rights.

³ In English, Actions for the Promotion and Protection of Endangered Peoples and Species.

law when awarding the natural gas concessions by, *inter alia*, failing to conduct or require necessary environmental impact studies and consultations with indigenous communities, and by awarding winning bids to inexperienced companies that did not fulfill the auction requirements.

Through this Application, Applicants seek to take discovery under 28 U.S.C. § 1782 from Respondents Winds Exploration and Production LLC, Unite Oil and Gas Production LLC, and Franklin Ihekwoaba for use in this anticipated lawsuit. Applicants request the information in Respondents' possession, custody, or control that would help shed light on the conduct of the auction and the concessions awarded, including all bid documents received from or submitted to the DRC government, any environmental or social assessments, and communications to and from the DRC government. Applicants also seek to depose corporate representatives and Respondent Ihekwoaba regarding the requested information.

This Application satisfies § 1782's statutory requirements. *See* 28 U.S.C. § 1782. First, Respondents reside or may be found in this District, where their residences or headquarters are located. Second, the requested discovery is for use in a reasonably contemplated foreign proceeding and Applicants can submit the evidence sought directly to the DRC court. Third, Applicants, as petitioners in the planned proceeding, are "interested persons" entitled to seek assistance from this Court under § 1782.

Furthermore, the discretionary factors district courts consider in assessing an application under § 1782 weigh in favor of granting this Application: (1) Respondents are not named or contemplated parties in the proceedings in the DRC and are not subject to its jurisdiction; (2) the court in the DRC will be receptive to § 1782 assistance; (3) this Application does not conceal an attempt to circumvent foreign proof-gathering restrictions and is a good faith effort to obtain probative evidence; and (4) the discovery sought is specific, limited in scope, and not unduly

intrusive or burdensome. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004). Applicants seek discovery that falls squarely in the purview of the statute. Applicants respectfully ask that the Court grant this Application and authorize the requested discovery. To the extent necessary, Applicants would welcome the opportunity for an oral hearing if it would assist the Court in resolution of their Application.

II. FACTUAL BACKGROUND

A. Parties

ACEDH is a non-profit organization that was created in 2008 in North Kivu. Exhibit A, Declaration of Olivier Bahemuke Ndoole (“Ndoole Decl.”) ¶ 2. ACEDH works to secure the protection of the environment and human rights, focusing on environmental justice, community-based protection of conservation areas, and accountable and transparent governance of land, fisheries, and energy. *Id.* They do this through a variety of strategies that includes assistance to environmental land rights advocates and strategic litigation on nature protection. *Id.*

APEM is a non-profit association established in 2013 in Kinshasa. Exhibit B, Declaration of Blaise Mudodosi (“Mudodosi Decl.”) ¶ 3. Its mission is working with stakeholders to achieve human well-being through respect for human rights and community rights in a healthy and balanced environment. *Id.* The association seeks to promote governance in the forestry, mining, hydrocarbons, and environmental justice sectors through advocacy based on local work involving all stakeholders and through capacity building and strategic litigation. *Id.* APEM advocates for environmental protection and human rights while working alongside local communities impacted by the activities of extractive companies and is supporting communities that may be affected by the exploitation of gas from Lake Kivu. *Id.* ¶ 4. The association is comprised of lawyers and foresters. *Id.*

A Limited Liability Company (LLC) operating under the name Winds Exploration and Production, LLC was initially formed in 2018 by Respondent Ihekwoaba to “own, acquire and manage oil and gas assets.” Exhibit C, Declaration of Tamara Morgenthau (Morgenthau Decl.) Ex. 3. On September 9, 2024, Respondent Ihekwoaba filed a Certificate of Amendment on behalf of Winds Exploration and Production, LLC amending its name to “Unite Oil and Gas Production LLC” (the Respondent hereinafter known as “Winds (Unite)”). Morgenthau Decl. Ex. 2 The next day, Respondent Ihekwoaba formed a new LLC, “Winds Exploration and Production LLC” (the Respondent hereinafter known as “Winds II”). Morgenthau Decl. Ex. 1. Both Respondent Winds (Unite) and Respondent Winds II have their headquarters and principal place of business at 12818 Secret Forest Court, Cypress, Texas. Morgenthau Decl. Ex. 1, Ex. 5. On February 21, 2025, the Texas Secretary of State forfeited Winds (Unite)’s “charter, certificate or registration.” Morgenthau Decl. Ex. 4.

Respondent Ihekwoaba resides in this District,⁴ and was the “General Manager, Admin, or Chief Executive Officer” of Winds (Unite) during the gas auction and at the time Winds (Unite) was awarded the Idjwi block and signed a production sharing agreement.⁵

⁴ Motion to Vacate Judgment, *Stuart C. Irby Company, LLC v. Winds Exploration and Production, LLC and Franklin Ihekwoaba*, No. 3:24-cv-00538 (S.D. Mis. Sept. 22, 2025) (letter to court from Ihekwoaba listing his address); Order, *Stuart C. Irby Company, Inc. v Winds Exploration and Production, LLC and Franklin Ihekwoaba*, No. 3:24-cv-538, at 3 (S.D. Mis. Oct. 15, 2025) (finding that the Secret Forest address is Mr. Ihekwoaba’s residence); *see also*, e.g., Morgenthau Decl. Ex. 1 (listing Mr. Ihekwoaba’s address as 12818 Secret Forest Ct. Cypress, TX); Harris Central Appraisal District, Property Search, <https://hcad.org/property-search/property-search> (search for “IHEKWOABA FRANKLIN N” returns residential address “12818 SECRET FOREST CT CYPRESS, TX 77429”) (search conducted on October 16, 2025); *Wells Fargo Bank NA vs. Franklin N. Ihekwoaba*, No. 202539035 (Tex. App. - Harris Cty. 2025) (service executed at 12818 Secret Forest, Cypress, Texas).

⁵ Motion to Vacate Judgment, *Stuart C. Irby Company, LLC v. Winds Exploration and Production, LLC and Franklin Ihekwoaba*, No. 3:24-cv-00538 (S.D. Mis. Sept. 22, 2025) (letter to court from Ihekwoaba stating he served as “general manager, admin, or CEO.”); *see also* Frank Ihekwoaba, [LinkedIn](https://www.linkedin.com/in/frank-ihekwoaba-54a80b36), <https://www.linkedin.com/in/frank-ihekwoaba-54a80b36>;

B. The DRC government awarded three gas blocks in an auction.

On July 28, 2022, the DRC government put three methane gas blocks and 27 oil blocks up for auction. Ndoole Decl. ¶ 6. The government’s plans to hold an auction were publicly reported as early as 2020. *Id.* ¶ 3. The gas blocks are for methane in Lake Kivu, near the border between Rwanda and the DRC. *Id.* ¶ 5. In October 2022, the DRC hydrocarbons ministry announced that they had received bids from nine companies for the gas blocks. *Id.* ¶ 7.

On January 18, 2023, the ministry selected three winning bids for the gas blocks: Symbion Power and “RED”⁶ for the Makele block; Alfajiri Energy Corporation (“Alfajiri”) for the Lwandjofu block; and Respondent Winds (Unite) for the Idjwi block. Ndoole Decl. ¶ 8. On September 9, 2023, the government announced that it had signed production sharing agreements with Winds (Unite) and Alfajiri. *Id.* ¶ 9. To Applicants’ knowledge the government is still in negotiations with Symbion. *Id.* ¶ 10; Mudodosi Decl. ¶ 10.

C. ACEDH and APEM plan to bring a legal action in the DRC to contest the gas blocks and contracts.

ACEDH and APEM intend to bring an administrative law claim in the DRC to challenge the conduct of the auction and the attribution of the gas blocks to Symbion, Winds (Unite), and Alfajiri. Ndoole Decl. ¶ 24; Mudodosi Decl. ¶¶ 6-7. Applicants believe that the auction process and outcome were characterized by a lack of transparency, a failure to follow required procedures and laws, and improper government conduct that violates Congolese law. Applicants

Morgenthau Decl. Ex. 2 (Frank Ihekwoaba filed the form on behalf of the company in September 2024); Morgenthau Decl. Ex. 3 (filed the certificate of formation and listed as a manager).

⁶ The official government announcement states, “Symbion and RED.” Applicants believe RED stands for Renewable Energy Developments, which has been referred to as Symbion’s local subsidiary or partner. Ndoole Decl. ¶ 8.

intend for these alleged violations, as outlined below, to be the basis of a forthcoming administrative challenge.

Under Congolese law, the Council of Ministers must approve blocks for auction. Ndoole Decl. ¶ 11a. While the Council originally approved sixteen oil blocks for the auction, the Ministry of Hydrocarbons added eleven oil blocks and the three gas blocks. To Applicants' knowledge, these additional blocks were added without first presenting the blocks to the Council of Ministers for approval. *Id.* ¶¶ 4-6, 11a.

Congolese law also requires the government to conduct a prior environmental evaluation for any government policy, plan, or program that is likely to have significant environmental impacts. *Id.* ¶ 11b. Applicants, however, are unaware of any environmental evaluation done in connection with the oil and gas auctions. *Id.* The lack of such evaluation is particularly concerning in light of the environmental sensitivity of the area in question. *Id.* ¶ 13. The concession boundaries overlap with multiple national parks, indigenous peoples' territories, and other protected areas. *Id.* ¶ 11c. The area is well known as a biodiversity hotspot. *Id.* ¶ 16. Lake Kivu is also host to rich fisheries that support the livelihoods of thousands of fishermen and provide economic and food security to hundreds of thousands of people on its shores. *Id.* ¶¶ 15-17. If methane extraction contaminates the waters of the lake or otherwise affects the fisheries, the environmental and social impacts could be devastating. *Id.* ¶ 17. Moreover, there is significant scientific uncertainty around the safety of methane extraction in Lake Kivu. *Id.* ¶¶ 18-19. Due to the lake's unique limnic structure, carbon dioxide and methane are trapped in the lake, and scientists differ on whether and how methane extraction would increase or decrease the

likelihood of a catastrophic release of gases that would present risks to the millions of people living around the lake. *Id.*

Statutory and constitutional provisions protect the right of all stakeholders to participate in environmental decision making and guarantee indigenous populations the right to participate in the planning for projects that can affect them. *Id.* ¶ 11c. To Applicants’ knowledge, no consultations were undertaken with local communities, or indigenous populations, including a recognized Bambuti indigenous population that falls within the Idjwi gas block. *Id.*

Congolese law lays out specific requirements to participate in the auction, such as submitting three years of financial and operating statements, a work plan, a feasibility study, an environmental and social impact assessment, and an environmental and social management plan. *Id.* ¶¶ 11d-f. Applicants understand that these requirements were not met. *Id.* According to a report from investigative journalists, the government awarded one of the gas blocks to a company that did not meet the auction’s requirements. Alfajiri was allowed to participate in the auction, even though it was incorporated in January 2022 and thus could not submit the statutorily-required three years of accounting records. *Id.* ¶ 11d.

Moreover, investigative journalists have also reported that there was improper interference in the auction process. *Id.* ¶ 11e. Journalists reported that there were two versions of the report of the government technical committee that evaluated the bids – an earlier version in which Alfajiri received the lowest scores detailing how its bid lacked required information such as a work plan or feasibility study, and a later version that inexplicably revised the scores, giving Alfajiri the highest score. *Id.* According to the journalists, “sources with first-hand knowledge of the auction told [them] that Budimbu [the then minister of hydrocarbons], pressured ministry experts to change the report, effectively rigging the auction in Alfajiri’s favour,” with another

source also stating that “the process had been interfered with.” *Id.* The journalists reported that the team sent by the government to visit Alfajiri in Canada found a skeleton operation with no official business space. *Id.* ¶ 11g. They also reported that Alfajiri’s CEO had appeared at a business conference with the Congolese Minister of Hydrocarbons just two weeks before Alfajiri was announced as the winner of the Lwandjofu block. *Id.*

Articles 75 and 76 of Decree No. 16/010 of 19 April 2016 on the Regulation of Hydrocarbons requires the government to verify the technical and financial capacity and the registration documents of all auction participants prior to selecting the winner. *Id.* ¶ 20.

Applicants are concerned that the gas concessions have been awarded to companies that lack the requisite qualifications, *id.* ¶¶ 20-21, particularly in light of the high environmental and social stakes. *Id.* ¶¶ 13-19, 21.

Applicants are concerned about Winds (Unite)’s apparent lack of experience with lake-bed methane extraction in complex environments. Winds (Unite) won the largest methane gas block, yet, to Applicants’ knowledge, it has only a limited track record of small-scale methane production from one gas field in Utah, and its record is troubling. *Id.* ¶¶ 20b-d. In 2025, the Utah Board of Oil, Gas and Mines granted the regulator’s requests to plug Winds (Unite)’s wells and forfeit the company’s bond after investigations revealed “a pattern of regulatory non-compliance and operational absence,” including explosions and a leak. *Id.* ¶ 20d. Winds (Unite) never responded to any of these charges, and according to the regulator, the company abandoned its wells. *Id.*

Moreover, Winds (Unite)’s corporate privileges were forfeited by the State of Texas at the time it presented its bid and when the DRC government accepted its bid. *Id.* ¶ 20(b); Ndoole Decl. Exs. 1, 2. Applicants believe this was a relevant fact regarding the company’s capabilities

and one that the Congolese government should have identified when verifying their registration documents as required by Congolese law. Further, Applicants believe that Winds (Unite) could not have validly entered into its production sharing agreement, because its corporate charter was revoked at the time it entered into the agreement. Ndoole Decl. ¶ 20(b).

Applicants are also concerned that the proposed operators of the other gas blocks appear to lack the necessary experience to operate the blocks. Alfajiri, as noted above, was incorporated after the auction was announced. *Id.* ¶¶ 11d, 20a. And while Symbion may have been selected due to its early involvement in a project to extract methane from the Rwandan side of Lake Kivu, Symbion divested from that project long before operations began. *Id.* ¶ 20e.

On October 14, 2024, the Congolese Ministry of Hydrocarbons canceled the entire oil block auction, due to a lack of candidates, unreceivable bids, late bids, and inappropriate or irregular bids, and a lack of competition. *Id.* ¶ 12. Applicants believe that the Ministry should have also invalidated the attribution of the gas blocks, as the auction faced similar concerns and irregularities. *Id.*

D. The Applicants have already taken steps to prepare for litigation.

The Applicants have already taken several concrete steps to prepare for litigation. Applicants have spent time investigating the auction process and calling attention to apparent deficiencies and violations of Congolese law. *Id.* ¶ 25; Mudodosi Decl. ¶¶ 10-11. Together with other Congolese civil society groups, they have written letters to the Congolese authorities, Ndoole Decl. ¶¶ 22-23; Mudodosi Decl. ¶ 10, and signed a declaration seeking the cancellation of the decrees allocating the gas blocks and highlighting concerns and apparent violations of Congolese law associated with the auction. Ndoole Decl. ¶ 23, Mudodosi Decl. ¶ 10. They have also written to and met with the officials at Ministry of Hydrocarbons, seeking official copies of

the decrees allocating the gas blocks and contracts connected to those decrees. Mudodosi Decl. ¶ 8. This step is critical, because every administrative complaint must generally be accompanied by a copy of the act that is being challenged, as published in the Official Journal. Ndoole Decl. ¶ 29.

The application for discovery through the § 1782 procedure is a critical step in filing the intended litigation. As discussed below, Applicants need to present all legal and factual arguments in their initial complaint. *Id.* Thus, Applicants must gather the necessary evidence in order to prepare and submit an admissible complaint. *Id.* Applicants are thus seeking discovery through this application to gather evidence to enable them to file their reasonably contemplated litigation.

III. NATURE OF INFORMATION AND DOCUMENTS SOUGHT

Applicants seek an order granting leave to take discovery of documents and information in Respondents' possession, custody or control pertinent to the contemplated litigation in the DRC. Specifically, Applicants request narrow categories of documents and communications in Respondents' possession, custody, or control that are directly relevant to the specific aspects of the oil and gas auction in the DRC that are the subject of Applicants' intended administrative law complaint. As set out above, Applicants anticipate bringing claims based on alleged violations of Congolese law including: the government's awards of blocks to companies that did not meet the requirements to participate in the auction; the government's failure to prepare or require necessary environmental evaluations or environmental and social impact studies; the government's failure to consult with local communities and indigenous communities, and possible government misconduct during the process. *Supra* § II. C. Accordingly, Applicants request documents related to the gas blocks, conduct of the auction, information shared with participants and successful applicants in the auction, interactions between the government and

auction participants, winning bid applications and materials, and winning applicants' qualifications.

The evidence sought will assist Applicants and the DRC court in determining whether the auction complied with DRC law – including whether bidders qualified, whether the DRC hydrocarbons ministry followed its own environmental and social safeguard laws, whether the bids appropriately propose to mitigate environmental and social concerns, and whether there was undue interference by the Congolese government in the results of the auction. *Supra* II.C; Ndoole Decl. ¶ 31. The requests are limited in time and scope, as they are all tied to documents and information in Respondents' possession, custody or control concerning their auction bids or communications with the DRC government. It is virtually certain that the Respondents are in possession of the requested discovery. As a participant and successful applicant in the auction, Winds (Unite) will certainly have the material they submitted and received through this process, as well as communications around the auction and with the DRC government. While most of the relevant events took place before Winds II was formed in September 2024, it is not clear whether Winds II or Winds (Unite) holds the records and contractual rights and obligations of Winds (Unite) prior to September 2024, specifically the contract and rights to the Idjwi block, so Applicants have sought discovery from both parties.

Applicants also seek a Fed. R. Civ. P. 30(b)(6) deposition to depose corporate representatives regarding the requested information. In addition, Applicants seek to depose Respondent Ihekwoaba because he may also have specialized knowledge of the process by which the companies won the concessions, which could be adduced through a deposition. Respondent Ihekwoaba's business partner alleged that he committed Winds (Unite) to the auction outside the formal corporate channels; it is therefore critical to depose him personally.

Ndoole Decl. ¶ 32. In addition, Respondent Ihekwoaba held significant roles at Winds (Unite) and Winds II. Morgenthau Decl. Exs. 1-3.

Examples of the identical requests for production and deposition notice Petitioners request to send to each Respondent and corporate respondent, respectively, are represented in the attached Request for Production (Exhibit D) and Notice of Rule 30(b)(6) Deposition (Exhibit E). In addition, a subpoena for a deposition for Respondent Ihekwoaba is attached as Exhibit F. Applicants also request that the Court order Respondents to cooperate in verifying the authenticity of the documents to facilitate their submission as evidence in the forthcoming litigation in the DRC. *See, e.g., Amgen Inc. v. Hill*, 2015 U.S. Dist. LEXIS 38832, at *1-2 (D. Utah Feb. 24, 2015) (ordering documents produced under § 1782 to be “accompanied by a signed certification verifying the authenticity of the documents.”).

IV. SECTION 1782 ENTITLES APPLICANTS TO TAKE DISCOVERY FROM RESPONDENTS

A. This court has jurisdiction and venue is proper in this District.

This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 as this matter arises under 28 U.S.C. § 1782. This Court has general personal jurisdiction over Respondents and venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391 because Respondents have or had their headquarters and principal place of business in Cypress, Texas. *Supra* 4. This Court can exercise personal jurisdiction over Respondents Winds II and Winds (Unite) where they are incorporated and maintain their principal place of business. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (holding that “[w]ith respect to a corporation, the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’”) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 546 U.S. 735, 924 (2011)).

Publicly available material indicates that Respondent Ihekwoaba resides in this District. *Supra* 4. “[A]n individual is subject to general [personal] jurisdiction in [his] place of domicile.” *See Direct v. Python Leads, LLC*, 689 F. Supp. 3d 430, 434 (S.D. Tex. 2023) (citing *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021)). Plaintiffs will also attempt to serve Respondent Ihekwoaba personally in this district, which also provides personal jurisdiction over him. *E.g. Yax Ecommerce LLC v. Proficient Supply LLC*, 2024 U.S. Dist. LEXIS 136174, at *5 (S.D. Tex. Aug. 1, 2024).

B. This Application satisfies Section 1782’s three statutory requirements.

Section 1782 provides that a district court possesses jurisdiction to “cooperate with foreign and international tribunals by ordering (1) a person who resides or is found in the district to (2) give testimony or produce documents for use in a foreign court proceeding, where (3) the request is made by an interested person.” *Grupo Mex. SAB de CV v. SAS Asset Recovery, Ltd.*, 821 F.3d 573, 574 (5th Cir. 2016); *see also* 28 U.S.C. § 1782. This Application satisfies all three requirements.

First, Respondents reside or are found in this district. Winds II and Winds (Unite) have or had their headquarters and principal place of business in this district, *supra* 4, which is sufficient to satisfy this requirement. *See In re Ex Parte in re Xiaomi Tech. Germany GMHB*, 2022 U.S. Dist. LEXIS 230789, at *3-4 (W.D. Tex. 2022); *In re Ltda.*, 2024 U.S. Dist. LEXIS 176678, at *10 (N.D. Tex. Aug. 8, 2024). Publicly available material indicates that Respondent Ihekwoaba resides in this District and Plaintiffs will also attempt to serve him personally in this district, which will satisfy the “found in” requirement. *See In re Gazprom Latin Am. Servicios, C.A.*, 2016 U.S. Dist. LEXIS 87175, at *35 (S.D. Tex. 2016) (citing *Edelman v. Taittinger (In re Edelman)*, 295 F.3d 171, 180 (2d Cir. 2002)).

Second, the discovery sought is for use in a contemplated foreign proceeding before a foreign tribunal in the DRC. In *Intel*, the U.S. Supreme Court held that interested persons can file applications for discovery under § 1782 for actions that are within “reasonable contemplation.” 542 U.S. at 259. To establish that a proceeding is in reasonable contemplation, the applicant must demonstrate “reliable indications of the likelihood that proceedings will be instituted within a reasonable time.” *Bravo Express Corp. v. Total Petrochemicals & Ref. USA, Inc.*, 613 F. App’x 319, 322 (5th Cir. 2015) (quoting *Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1270 (11th Cir. 2014)).

Here, Applicants have provided sworn declarations from their leadership that they intend to file an action and describe the steps they have taken towards filing a lawsuit, the legal bases for their anticipated claims, and the relevant facts. Applicants have already written letters to the government and signed a declaration raising issues with the auction process. *Supra* § II.D. Applicant APEM has also written to, and met with, government officials from the Congolese Ministry of Hydrocarbons, seeking access to official documents related to the gas block auction that will be needed for the contemplated litigation. *Id.*

This is precisely the type of concrete and reliable evidence that courts rely on. *See Bravo Express Corp.*, 613 F. App’x at 323 (holding a claim was in “reasonable contemplation” based on similar sworn affidavit from petitioner’s lawyer identifying claims and relevant facts); *Mees v. Buiter*, 793 F.3d 291, 295-96 (2d Cir. 2015) (petitioner included evidence to substantiate its future application and a declaration from her Dutch attorney regarding Dutch procedural law showing that the plaintiff needed the evidence to substantiate the complaint.); *In re Top Matrix Holdings Ltd.*, 2020 U.S. Dist. LEXIS 7896, at *13-14 (S.D.N.Y. Jan. 20, 2020) (“This Circuit has found that sworn statements attesting to petitioners’ intent to litigate and describing the legal theories on which they plan to rely are sufficiently concrete to meet the statutory requirement.”).

The DRC requires parties to present their legal and factual arguments in their initial filing materials. Ndoole Decl. ¶ 29. This requires Applicants to conduct legal and factual research at this preparatory stage and gather the necessary evidence to prepare an admissible petition. *Id.* Applicants are also reasonably contemplating filing a *référé-suspension*, the Congolese equivalent of a preliminary injunction, which would require them to provide all necessary evidence with their request. *Id.* ¶ 30.

Courts regularly grant discovery when Applicants are preparing their case and require the discovery in advance of filing. *See Bravo Express Corp.*, 613 Fed. App'x at 323; *Consortio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1271 (11th Cir. 2014); *In re S.T.*, 2025 U.S. Dist. LEXIS 102553, at *2, 6 (N.D. Cal. May 29, 2025) (granting discovery to identify potential Defendants in case); *Proteras Co., Ltd. v. Google LLC*, 2025 U.S. Dist. LEXIS 192255, at *3, 5 (N.D. Cal. Sep. 29, 2025) (same); *Salcido-Romo v. S. Copper Corp.*, 2016 U.S. Dist. LEXIS 76584, at *2, 4 (D. Ariz. June 10, 2016); *In re Kiobel*, 2017 U.S. Dist. LEXIS 9746, at *9 (S.D.N.Y. Jan. 24, 2017) (reversed and remanded on other grounds, *Kiobel v. Cravath, Swaine & Moore LLP*, 895 F.3d 238 (2d Cir. 2018)); *In re Mutabagani*, 2023 U.S. Dist. LEXIS 61183, at *8-9 (S.D.N.Y. Apr. 6, 2023) (granting discovery where evidence was needed “to satisfy ... pleading requirements.”).

Third, Applicants are interested persons. A litigant in a foreign proceeding is “the most common example” of an “interested person.” *See Intel*, 542 U.S. at 256. Applicants have standing to bring an administrative lawsuit in the DRC and are planning to be petitioners their reasonably contemplated litigation. Ndoole Decl. ¶ 27; Mudodosi Decl. ¶¶ 6-7. This Application thus satisfies the three statutory requirements.

C. The discretionary factors favor granting discovery.

“[O]nce an interested party makes the requisite showing that it has met the statutory

factors, the district court judge has the discretion to grant the application.” *Tex. Keystone, Inc. v. Prime Nat. Res., Inc.*, 694 F.3d 548, 553 (5th Cir. 2012). The court’s discretion should be guided by the “‘twin aims of the statute,’ which are ‘to provide efficient means of assistance to participants in international litigation in our federal courts and to encourage foreign countries by example to provide similar means of assistance to our courts.’” *Id.* at 553-54 (quoting *In re Ishihara Chem. Co.*, 251 F.3d 120, 124 (2d Cir. 2001)). The four discretionary factors to guide the court are:

- (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 Express Corp., 613 F. App’x at 323-24 (quoting *Intel*, 542 U.S. at 264-65).

These factors are discretionary, and thus a failure to meet any of them does not preclude discovery. *Intel*, 542 U.S. at 264; accord *Ecuadorian Plaintiffs v. Chevron Corp.*, 619 F.3d 373, 377 (5th Cir. 2010) (holding district court’s decision to grant discovery was not an abuse of discretion “even if” petitioner did not satisfy one *Intel* factor). Nevertheless, in this case, all four discretionary factors weigh in favor of granting § 1782 discovery.

1. Respondents will not be parties to the contemplated proceedings in the DRC.

The need for discovery is apparent where the person from whom discovery is sought is not a participant in the matter abroad and is not subject to the foreign proceeding’s jurisdiction. See *Intel*, 542 U.S. at 264 (finding that “nonparticipants in the foreign proceeding may be outside the foreign tribunal’s jurisdictional reach; hence, their evidence, available in the United

States, may be unobtainable absent § 1782(a) aid”). Respondents are not contemplated defendants or otherwise possible parties to the proceeding in the DRC; in a Congolese administrative lawsuit, as in the United States, the defendant is the State and not a private party. Ndoole Decl. ¶¶ 33-34.

Courts have routinely rejected an exhaustion requirement that would require Applicants to first seek discovery in the foreign jurisdiction. *Mees*, 793 F.3d at 303 (citing *Metallgesellschaft v. Hodapp*, 121 F.3d 77, 79 (2d Cir. 1997)); *Venequip, S.A. v. Mustang Mach. Co.*, 2022 U.S. Dist. LEXIS 155822, at *5 (S.D. Tex. 2022). And Applicants could not, as a matter of DRC law, seek a court order to obtain all the information requested from Respondents through a proceeding in the DRC. Legal entities in the United States are not subject to the jurisdiction of Congolese courts, and a Congolese Court cannot order production of evidence from an entity or individual in the United States. Ndoole Decl. ¶ 34. Moreover, there is no mechanism for pre-action discovery in the DRC, nor is there an equivalent to the U.S. Freedom of Information Act that would allow Applicants to obtain the evidence they need through administrative channels. *Id.* ¶ 35. Accordingly, this factor weighs in favor of granting discovery.

2. The nature of the foreign tribunal, the character of the proceedings abroad, and the receptivity of the DRC proceeding to U.S. judicial assistance favor granting this Application.

There is a strong presumption that the foreign proceeding will be receptive to evidence obtained in the United States, with the Second Circuit holding that “[a]bsent specific directions to the contrary from a foreign forum, [Section 1782’s] underlying policy should generally prompt district courts to provide some form of discovery assistance.” *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1102 (2d Cir. 1995). To deny discovery because of a lack of receptiveness, a court must find a “clear directive . . . that it would reject evidence produced in

the United States.” *Ecuadorian Plaintiffs v. Chevron Corp.*, 619 F.3d 373, 377 (5th Cir. 2010) (citing *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1102 (2d Cir. 1995)). Respondents bear the burden of showing that the DRC would reject this evidence. *Id.*

Here, there is no evidence that a DRC court would reject evidence obtained through § 1782. In the DRC, Applicants are not limited to the record that was before the agency when it made its decision. Ndoole Decl. ¶ 36. Accordingly, Applicants will be free to rely on evidence obtained through this discovery request in their initiating application. *Id.* ¶¶ 36-37. Applicants have provided testimony indicating that they should be able to use and submit the evidence obtained through this application in their proceedings. *Id.* ¶ 37. Another district court has granted discovery under § 1782 for a proceeding in the DRC. *See* Order Granting Motion, *In re Wildlife Conservation Society*, No. 1:24-mc-00246 (S.D.N.Y. Sept. 4, 2024). This factor favors granting discovery.

3. This Application does not conceal an attempt to circumvent foreign proof-gathering restrictions.

This Application is not an attempt to “circumvent foreign proof-gathering restrictions,” *Intel*, 542 U.S. at 265, or other policies of the DRC or the United States; it is a good faith effort to access relevant evidence to enable Applicants to file their contemplated proceeding in the DRC. “Broadly speaking, the third *Intel* factor asks whether a request seeks documents that cannot be obtained because the foreign jurisdiction *prohibits* the discovery of those documents.” *Banco Mercantil de Norte, S.A. v. Páramo*, 2024 U.S. Dist. LEXIS 215848, at *13 (S.D. Tex. Nov. 27, 2024) (internal quotation marks omitted, emphasis in original). Section 1782 “contains no threshold requirement that evidence sought from a federal district court would be discoverable under the law governing the foreign proceeding, and district courts should not

outright deny discovery under § 1782 solely because such discovery is unavailable in the foreign country.” *Id.* (cleaned up, quoting *Intel*).

No such rules prohibiting the acquisition or use of the information sought exist here. Ndoole Decl. ¶ 36. Applicants’ request is to obtain evidence necessary from a U.S. resident and U.S. based companies to build and bring reasonably contemplated litigation. The third *Intel* prong thus favors granting discovery.

4. The discovery sought is narrowly tailored to the needs of the foreign proceeding and is neither unduly burdensome nor intrusive.

The final *Intel* factor looks to whether the requests are “unduly intrusive or burdensome.” 542 U.S. at 265. Like all federal discovery, the proper scope of discovery under § 1782 is governed by the Federal Rules of Civil Procedure. *Tex. Keystone*, 694 F.3d at 554. Accordingly, Applicants can seek discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

Here, Applicants have presented reasonable and narrowly tailored discovery requests. Applicants’ requests are relevant to central issues in the contemplated proceedings in the DRC, and their minimal burden is proportional to the needs and import of a case alleging serious misconduct in a government auction worth hundreds of millions of dollars and potentially risking millions of lives. The requests are also narrowly tailored and defined, which reduces any burden. They are limited in time and scope to information and documents in Respondents’ possession, custody or control relevant to the auction, which took place only a few years ago. The request is narrow, both based on topic and time frame. The limited discovery sought from Respondents is thus neither unduly intrusive nor burdensome and falls well within the scope of discovery that the Federal Rules allow.

V. CONCLUSION

The information sought by this Application would be essential to the full and fair adjudication of Applicants' reasonably contemplated proceeding in the DRC. For the foregoing reasons, Applicants respectfully request that the Court enter an Order granting leave to serve the Respondents with the discovery attached to this Application as Exhibit D, Exhibit E, and Exhibit F.

Dated: Oct. 27, 2025

Respectfully submitted,

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