

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re Application of :
CHEVRON CORPORATION :
for an Order Pursuant to 28 U.S.C. § 1782 :
to Conduct Discovery from MCSquared PR, : No. 1:14-mc-00392-LAK
Inc. for Use in Foreign Proceedings, :
 :
Petitioner. :
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**CHEVRON CORPORATION’S RESPONSE IN NON-OPPOSITION TO
MCSQUARED PR, INC.’S MOTION TO SEAL EXHIBITS (DKT. 35)**

MCSquared PR, Inc. (“MCS”) seeks to seal four exhibits filed by Chevron in its application to obtain discovery from MCS pursuant to 28 U.S.C. § 1782 (“Section 1782”) (Exs. 147, 155, 195, 198). These exhibits consist of Ecuadorian migration and labor record for individuals associated with MCS (although not MCS employees), which MCS alleges are confidential and should be sealed. While Chevron has no objection to MCS’s motion to seal these documents, Chevron disputes MCS’s characterization of the documents at issue and the applicable law. Specifically, the documents in question are publicly obtainable in Ecuador and, in fact, constitute “judicial records.” Moreover, it is our understanding that these documents were legally and properly obtained in Ecuador. Finally, Chevron wants the record to be clear on the circumstances that resulted in MCS’s counsel’s filing of this motion, even though Chevron’s counsel offered to stipulate to sealing.

Background. Chevron filed an application for Section 1782 discovery from MCS on November 24, 2014. The application included four exhibits which consisted of the migration and labor records of Danilo Roggiero (husband of MCS’s director Maria Garay) and Cynthia Zapata (a former MCS employee). Over five weeks after Chevron filed its Section 1782 applica-

tion, MCS contacted Chevron's counsel and threatened to file a suit against Chevron and others on the basis that they had purportedly violated various U.S. and Ecuadorian laws in obtaining the documents. MCS also accused Chevron of obtaining another document submitted with the petition (Ex. 190), an email involving Garay and certain Ecuadorian government officials, through "unlawful" means. Ex. 227¹; *see also* Dkt. 21 at 4 (accusing Chevron of "hacking or wiretapping" to obtain Ex. 190). In response, Chevron informed MCS the next day that its accusations had no basis in fact or law, among other grounds, because the migration and labor records are publicly obtainable in Ecuador and the email in question was located on a public Google forum and obtained in an ordinary Google search. Nonetheless, in the interests of avoiding unnecessary disputes, Chevron's counsel offered to stipulate to the sealing of the migration and labor records. Ex. 228.

MCS's counsel did not immediately respond to Chevron's offer. A week later, MCS sent Chevron another letter, accepting Chevron's offer to seal the documents, while at the same time continuing to threaten Chevron and its counsel with frivolous claims. Ex. 229 ("[W]e will agree to the entry of a stipulated order sealing the documents in question . . . [h]owever, please note that it is my clients['] position that your client's offer to seal the documents is a bit too little and too late to remediate the severe and outrageous infringement of my clients' privacy interests"). MCS did not contest the authenticity of the documents or identify any alleged harm. Chevron provided MCS with a stipulation to seal the documents, but MCS added language requiring Chevron to stipulate to MCS's "reservation" of its right to pursue its frivolous claims, which was obviously unacceptable to Chevron. Exs. 230, 235. Chevron declined the proposed additions

¹ Exhibits 1–226 are attached to the declarations of Anne Champion, previously filed with this Court (Dkts. 4, 37). Exhibits 227–235 are attached to the Declaration of Claudia M. Barrett filed in connection with this response.

and provided MCS with a signed stipulation using the language it had originally proposed. Ex. 231. MCS refused to sign the stipulation, and Chevron informed it that it would file a motion to seal. A few hours later, MCS filed its motion.

Argument. As Chevron has already communicated to MCS, it does not oppose sealing these documents to address MCS's professed privacy concerns and avoid disputes about collateral issues. However, contrary to the inflammatory accusations made by MCS, the records in question may be obtained in accordance with the Ecuador Constitution and statutes, which provide broad access to information held by the government. *See* Exs. 232, 233.² Indeed, Chevron notes that migration records of the type filed here were also filed in the RICO proceeding, where Defendants made similar objections, which were overruled. *See Chevron Corp. v. Donziger*, 11 Civ. 0691, Dkt. 1529 (Oct. 10, 2013) (citing to Donziger migration record).

The legal provisions cited by MCS do not appear applicable. MCS points to the Ecuador Constitution and the Ecuadorian Law of the National Registry System of Public Data ("LNRSPD"), but fails to explain how these sources prohibit the dissemination of this public information. As noted above, the Constitution in fact permits obtaining this information. Moreover, the statute cited by MCS does not reference "employment history, salary, schedule, pay stub dates, national identification number, address, and telephone number," the information that MCS claims (Mot. at ¶ 2) is protected. *See* LNRSPD, Article 6, available at <http://www.derechoecuador.com/productos/producto/catalogo/registros-oficiales/2010/marzo/code/19514/registro-oficial-no-162---miercoles-31-de-marzo-de-2010-suplemento>.

² MCS's claims that the attorney who obtained the records misrepresented information to the Ecuadorian court to obtain the documents are baseless. The request states that it requires the action in connection with the Lago Agrio litigation, the "civil action seeking compensation for environmental torts" that MCS refers to in its motion. Mot. at ¶ 3.

MCS's comparison of "cédula" numbers with Social Security numbers is also misplaced. Unlike U.S. Social Security numbers, "cédula" numbers are widely disseminated in Ecuador and available for look up on a website using an individual's name and birthday. *See* <https://verificatusdatos.registrocivil.gob.ec/cdd/>.³

Finally, although denying any involvement in the www.losvendepatrias.com website and associated social media accounts, on December 19, 2014, the Los Vendepatria Twitter account tweeted the name of the attorney who requested the migration records, adding him to its hit list of "homeland sellers." Dkt. 37-11 (Ex. 221). This retaliation underscores that MCS knows more than it admits regarding the "vendepatrias" site and that Chevron's concerns about witness intimidation are well-founded.

Dated: New York, New York
January 15, 2015

Respectfully submitted,

By: /s/ Randy M. Mastro

GIBSON, DUNN & CRUTCHER LLP

Randy M. Mastro
Andrea E. Neuman
Anne Champion
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Attorneys for Petitioner Chevron Corporation

³ Note also, for example, the CVs of several of the individuals on Richard Cabrera's team—which were included in a public filing in Ecuador—contained their home addresses, phone numbers and ID numbers. *See, e.g.*, Ex. 234 (excerpts from Cabrera Report, Annex V).