



22/1 paragraph a, c, 2, 23, 26, 29/1-2-3-4) of Federal Penal Code No. (20) of 2018. Although the United States has no treaty obligation to assist the UAE, it generally does so as a matter of comity.

3. According to Emirati authorities, on January 15, 2020, the Victim Company's branch manager received a phone call that claimed to be from the company headquarters. The caller sounded like the Director of the company, so the branch manager believed the call was legitimate. The branch manager also received several emails that he believed were from the Director that were related to the phone call. The caller told the branch manager by phone and email that the Victim Company was about to acquire another company, and that a lawyer named Martin Zelner (Zelner) had been authorized to coordinate procedures for the acquisition. The branch manager then received several emails from Zelner regarding the acquisition, including a letter of authorization from the Director to Zelner. Because of these communications, when Zelner asked the branch manager to transfer USD 35 million to several accounts as part of the acquisition, the branch manager followed his instructions. The Emirati investigation revealed that the defendants had used "deep voice" technology to simulate the voice of the Director. In January 2020, funds were transferred from the Victim Company to several bank accounts in other countries in a complex scheme involving at least 17 known and unknown defendants. Emirati authorities traced the movement of the money through numerous accounts and identified two transactions to the United States. On January 22, 2020, two transfers of USD 199,987.75 and USD 215,985.75 were sent from two of the defendants to Centennial Bank account numbers, xxxxx7682 and xxxxx7885, respectively, located in the United States.

4. To further the investigation, Emirati authorities have asked U.S. authorities to provide bank records and information pertaining to Centennial Bank account numbers, xxxxx7682 and xxxxx7885.

LEGAL BACKGROUND

5. When executing a treaty or non-treaty request for assistance from a foreign authority, an attorney for the government may file an application to obtain any requisite court orders under 18 U.S.C. § 3512. This section authorizes a federal court to issue such orders and provides in pertinent part:

Upon application, duly authorized by an appropriate official of the Department of Justice, of an Attorney for the Government, a Federal judge may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing, and restitution.

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[A]n application for execution of a request from a foreign authority under this section may be filed . . . in the District of Columbia.

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The term “foreign authority” means a foreign judicial authority, a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters.

18 U.S.C. § 3512(a)(1), (c)(3), (h)(2).

6. Congress enacted this section to make it “easier for the United States to respond to [foreign] requests by allowing them to be centralized and by putting the process for handling them within a clear statutory scheme.” 155 Cong. Rec. 6,810 (2009) (statement of Sen. Whitehouse); Foreign Evidence Request Efficiency Act of 2009, Pub. L. No. 111-79, 123 Stat.

2086.<sup>1</sup> This section provides clear authority for the federal courts, upon application duly authorized by an appropriate official of the Department of Justice, to issue orders that are necessary to execute a foreign request.

7. An application is duly authorized by an appropriate official of the Department of Justice when the Office of International Affairs<sup>2</sup> has reviewed and authorized the request, and executes the request itself or delegates execution to another attorney for the government.<sup>3</sup> Upon such a duly authorized application, Section 3512 authorizes a federal judge<sup>4</sup> to issue “such orders as may be necessary to execute [the] request,” including: (1) search warrants under Fed. R. Crim. P. 41; (2) orders for electronic records under 18 U.S.C. § 2703; (3) orders for pen registers or trap and trace devices under 18 U.S.C. § 3123; and (4) orders appointing a person to direct the taking of testimony or statements and/or the production of documents or other things. See 18 U.S.C. § 3512(a)(1)--(b)(1). In addition, a federal judge may order any necessary procedures to

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<sup>1</sup> Prior to the enactment of 18 U.S.C. § 3512, the United States routinely utilized the procedures authorized by 28 U.S.C. § 1782 (the “commissioner” process) to execute requests from foreign authorities. See In re Request from the United Kingdom, 685 F.3d 1, 11 (1st Cir. 2012) (18 U.S.C. § 3512 provides a more streamlined process than 28 U.S.C. § 1782, the statute under which foreign requests were executed prior to enactment of section 3512); see also Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241, 247-49 (2004) (describing history of Section 1782). When enacting Section 3512, Congress anticipated that improved U.S. handling of foreign requests would ensure reciprocity in response to U.S. requests for assistance in its criminal investigations. See, e.g., 155 Cong. Rec. 10,093 (2009) (statement of Rep. Schiff).

<sup>2</sup> The Attorney General, through regulations and Department of Justice directives, delegated to the Office of International Affairs the authority to serve as the “Central Authority” under treaties and executive agreements between the United States and other countries pertaining to mutual assistance in criminal matters. See 28 C.F.R. 0.64-1, 0.64-4, and Appendix to Subpart K, Directive Nos. 81B and 81C (2018).

<sup>3</sup> “Section 3512 can be invoked only when authorized by OIA. . . . Such authorization occurs when an attorney for the government, or his or her office, receives the referral of the request for execution from OIA.” Memorandum from the Deputy Attorney General to Department of Justice Components (May 16, 2011) (on file with the Office of International Affairs).

<sup>4</sup> The term “federal judge” includes a magistrate judge. See 18 U.S.C. § 3512(h)(1); Fed. R. Crim. P. 1(b)(3)(B) (including a magistrate judge in the definition of federal judge).

facilitate the execution of the request, including any procedures requested by the foreign authority to facilitate its use of the evidence. 18 U.S.C. § 3512(a)(1).

8. Section 3512 also authorizes any person appointed to direct the taking of testimony or statements and/or the production of documents. The appointed person has authority to: (1) issue an order requiring a person to appear and/or produce documents or other things; (2) administer any necessary oaths; and (3) take testimony or statements and receive documents or other things. 18 U.S.C. § 3512(b)(2). In ordering a person to appear and/or produce documents or other things, the person appointed, commonly referred to as the “commissioner,” typically uses a subpoena entitled “Commissioner’s Subpoena.” Any such subpoena may be served or executed anywhere in the United States. 18 U.S.C. § 3512(f).

#### REQUEST FOR ORDER

9. The Office of International Affairs has reviewed and authorized the Request, and is executing the Request itself. Consequently, this application for an Order appointing the undersigned attorney as a commissioner to collect evidence and to take such other action as is necessary to execute the Request has been “duly authorized” within the meaning of Section 3512. In addition, the Request was submitted by an appropriate “foreign authority,” the Ministry of Justice of the United Arab Emirates, in the UAE and seeks assistance in the investigation of money laundering – a criminal offense in the UAE. The requested Order is necessary to execute the Request, and the assistance requested, *i.e.*, the production of bank records, falls squarely within that contemplated by Section 3512. Finally, this application was properly filed in the District of Columbia.

10. This application is being made *ex parte*, consistent with U.S. practice in its domestic criminal matters.


11. When executing a foreign request for assistance in a criminal matter, Section 3512 authorizes the use of compulsory process comparable to that used in domestic criminal investigations and/or prosecutions. Because subpoenas utilized in U.S. criminal proceedings (*i.e.*, grand jury and criminal trial subpoenas) are issued without notice to any person other than the recipient (*i.e.*, no notice to targets or defendants), orders and commissioner subpoenas issued in execution of a foreign request pursuant to Section 3512 likewise should require no notice other than to the recipients. This is true even if the Requesting State, as here, seeks financial records, because the Right to Financial Privacy Act, 12 U.S.C. §§ 3401 et seq., including its notice provisions, does not apply to the execution of foreign requests for legal assistance. Young v. U.S. Dept. of Justice, 882 F.2d 633, 639 (2d Cir. 1989), cert. denied, 493 U.S. 1072 (1990); In re Letters of Request from the Supreme Court of Hong Kong, 821 F. Supp. 204, 211 (S.D.N.Y. 1993); In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-Au-Prince, Republic of Haiti, 669 F. Supp. 403, 407 (S.D. Fla. 1987). Accordingly, this Court should authorize a commissioner to collect the evidence requested without notice to any person(s) or entity(ies) other than the recipient(s) of any given commissioner subpoena.

12. Therefore, the United States respectfully requests that this Court issue the attached Order, pursuant to 18 U.S.C. § 3512, appointing the undersigned attorney, Rachel G. Hertz, Trial Attorney, Office of International Affairs (or a substitute or successor subsequently designated by the Office of International Affairs) as a commissioner, authorizing the undersigned to take the actions necessary, including the issuance of commissioner's subpoenas, as needed, to collect the evidence necessary to execute any pending request for assistance and any subsequent,

supplemental requests in connection with the same matter, in a manner consistent with the intended use of the evidence.

Respectfully submitted,

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DIRECTOR  
OFFICE OF INTERNATIONAL AFFAIRS  
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By:   
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1. may issue commissioner's subpoenas to be served at any place within the United States on persons (natural and legal) ordering them or their representatives to appear and to testify and/or produce evidence located within the United States;

2. shall adopt procedures to collect the evidence requested consistent with its use in the investigation, prosecution, or proceeding in the UAE for which the Dubai Public Prosecution Office has requested assistance, which may be specified in the Request or subsequent requests in this matter or provided by, or with the approval of, the Ministry of Justice of the United Arab Emirates;

3. may, in collecting the evidence requested, be assisted by persons whose presence or participation is authorized by the commissioner, including, without limitation, individuals employed by U.S. law enforcement agencies and/or representatives of the UAE who, as authorized or directed by the commissioner, may direct questions to any witness;

4. may seek such further orders of this Court as may be necessary to execute this Request, or subsequent requests in this matter including orders to show cause why persons served with commissioner's subpoenas who fail to appear and/or produce evidence should not be held in contempt; and

6. shall transmit the evidence collected to the UAE.

Date: \_\_\_\_\_

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UNITED STATES MAGISTRATE JUDGE