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Assistance Available in the United States Pursuant to International Conventions on the Service of Documents and Obtaining Evidence

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Service of Documents in Civil or Commercial Matters

The U.S. Department of Justice’s Office of International Judicial Assistance (“OIJA”) serves as the Central Authority pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention”). OIJA also serves as the Central Authority pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory (“Inter-American Convention”), to which the United States is a signatory for purposes of legal service of documents in civil or commercial matters. In addition, OIJA handles service requests in civil or commercial matters, typically received from non-Convention States, through diplomatic channels. Requests for service of judicial and extrajudicial documents directed at private individuals or companies located in the United States are executed through a private contractor. Accordingly, these service requests and service-related inquiries should be sent directly to OIJA’s contractor, ABC Legal Services (“ABC Legal”). For service requests pursuant to the Hague Service Convention or letters rogatory through diplomatic channels, the documents need to be accompanied by a \$95 USD processing fee, payable to ABC Legal Services. There is no fee for service requests pursuant to the Inter-American Convention. Additional information is available here: <https://www.abclegal.com/international/service-of-process-overview> and <https://www.hcch.net/en/states/authorities/details3/?aid=279>. Please also see our website for guidance: <https://www.justice.gov/civil/service-requests>. In order to obtain a status update on a pending service request sent to ABC Legal, please contact internationalinfo@abclegal.com or +1 206-521-9000.

Unlike service requests directed at private individuals or companies located in the United States, which are executed by ABC Legal, requests for service on the United States Government, which includes its departments, agencies, or instrumentalities, should be sent directly to OIJA. There is no fee for service requests designated for the United States Government. Requests for service on the United States Government should be mailed to OIJA at Office of International

Judicial Assistance, U.S. Department of Justice, Benjamin Franklin Station, P.O. Box 14360, Washington, DC 20044. For more information, please see the OIJA Guidance on Service on the U.S. Government, available online here: <https://www.justice.gov/civil/service-requests>.

Moreover, for service of judicial and extrajudicial documents directed at individuals involved in private matters located in the United States, there is no requirement under U.S. law that these requests must be sent through the Hague Service Convention, the Inter-American Convention, or diplomatic channels (and therefore to ABC Legal) for execution. The United States has no objection to the informal delivery of such documents by members of diplomatic or consular missions in the United States, through mail, or by private persons – if effective and valid under the law of the requesting State and applicable state law – provided no compulsion is used. OIJA plays no role in this process and cannot provide guidance as to whether a particular method of service is effective under applicable law.

Obtaining Evidence in Civil or Commercial Matters

The United States will execute Letters of Request sent pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Evidence Convention”) or letters rogatory received through diplomatic channels that seek specific testimony or documents from properly identified witnesses.¹ We execute requests that seek performance of a judicial act that courts in the United States can perform under U.S. law. The scope of permissible judicial acts is generally defined by the U.S. Federal Rules of Civil Procedure.² This memorandum provides an overview of international judicial assistance for civil and commercial matters OIJA can provide with respect to several commonly requested types of evidence.

For members of the Hague Evidence Convention, Letters of Request should preferably be submitted electronically to the U.S. Central Authority at OIJA@usdoj.gov. Otherwise, Letters of Request may be sent directly to our office at the following address:

U.S. Department of Justice
Civil Division
Office of International Judicial Assistance
Benjamin Franklin Station
P.O. Box 14360
Washington, D.C. 20044
United States of America

To ensure delivery of all documents sent by FedEx, requests must include the physical address of the foreign court or Requesting Authority, as well as a contact name and phone number.

¹ Please note the United States is only a party to the Inter-American Convention for purposes of service of process, not evidence gathering. Therefore, requests for evidence made pursuant to the Inter-American Convention will be returned unexecuted. The request would have to be resubmitted through diplomatic channels or pursuant to the Hague Evidence Convention if the Requesting Authority is a party to that Convention.

² Available for download at https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_december_1_2022_0.pdf.

If the request does not provide this information, execution may be delayed, or evidence may not be successfully returned.

Requests made via letters rogatory are transmitted through diplomatic channels to our office. Letters rogatory transmitted to the U.S. Department of State should preferably include a cover letter that states the evidence request is for use in a civil or commercial matter and asks that the U.S. Department of State transmit the letters rogatory request to OIJA for execution. Letters rogatory should be sent via diplomatic channels to the following address at the U.S. Department of State:

ATTN: Judicial Assistance Officer
U.S. Department of State
Office of the Legal Adviser, (L/CA/POG/GC)
2201 C Street, NW
SA-17, 10th Floor
Washington, DC 20522-1710

I. General Requirements for International Judicial Assistance Requests

Generally, a request must include the names of the parties in the foreign proceeding and a sufficiently detailed description of the nature of the underlying proceeding. If documentary evidence is sought, the request must include a description of the documents sufficient to allow the competent authority executing the request to identify them. If the request seeks witness testimony, the request must include the name and contact information for the witness and a list of specific questions to be posed, as well as any instructions that the Requesting Authority may have regarding the manner of questioning, *i.e.*, whether sworn or unsworn, and whether any privileges are applicable. All of this information must be provided in English. Unless a deposition is specifically requested, the method of obtaining witness testimony is through written answers to the interrogatories. The witness is allowed to respond in English or the original language of the request.

If the Court requires a deposition,³ the request must: (1) clearly state that an official transcript of the testimony is needed; (2) provide assurances that the cost of the court reporter will be paid; and (3) provide contact information (preferably email) for the party responsible for paying the court reporter (*see* Section II.d). If a request for a deposition does not provide all of this information, the testimony will be obtained through written answers. Further, if the witness requires an interpreter for the deposition, the foreign court must provide assurances that the cost of the interpreter will be paid for by the foreign court or the parties to the litigation. If a request does not include the necessary assurances, OIJA will contact the Requesting Authority seeking confirmation that payment for the services will be made by the foreign court or the parties to the litigation. If we do not receive a response by the deadline, the testimony will be obtained through written responses in English or the original language of the request.

³ Depositions in the United States require a court reporter who produces a transcript of the testimony. Use of a court reporter for depositions incurs costs, approximately \$250-\$500 USD per witness (but may cost more depending on the individual circumstances), which will need to be reimbursed.

To ensure efficient and prompt processing, we encourage Requesting Authorities to provide their contact information, preferably an email address, to which inquiries can be sent. This contact information may also be used to seek assurances for cost reimbursement and facilitate payment when necessary (*see* Section II.d). We also encourage Requesting Authorities to use the Model Letter of Request provided by the Hague Conference on Private International Law as a guideline to ensure the request includes all necessary information.⁴ Please see our website for additional information: <https://www.justice.gov/civil/evidence-requests>.

II. Procedural Considerations

a. Responding to Requests

Once an evidence request has been accepted for execution, OIJA will send a letter acknowledging receipt to the Requesting Authority. For requests received electronically, this letter will be sent by email. Once the evidence is obtained, the evidence will be transmitted back to the Requesting Authority. If the request is unable to be executed, the request will be returned with a letter detailing the reasons for rejection or providing guidance on how the request can be resubmitted. Status inquiries should be submitted by email to OIJA@usdoj.gov.

b. Time for Execution

While we try to act expeditiously when executing requests for evidence, at times execution is delayed due to circumstances beyond our control. Generally, requests for evidence will be executed within three (3) to six (6) months. However, if the witness is either unwilling or unable to provide the evidence voluntarily, the evidence must then be compelled pursuant to 28 U.S.C. § 1782, which may be a lengthier process.

If the request specifies the date by which the Requesting Authority requires receipt of the evidence, we will take that date under consideration. However, in many cases we may be unable to meet the required deadline. Our usual practice is to proceed with execution and to send an acknowledgment letter to the Requesting Authority explaining why we will be unable to meet the required deadline.

c. Evidence No Longer Needed

If at any point the evidence is no longer needed, please let us know by emailing OIJA@usdoj.gov as soon as possible. If a witness informs OIJA that the evidence is no longer needed, OIJA will usually return the request unexecuted indicating that the foreign court can resubmit the request if the evidence is needed in the future.

⁴ Available at <https://assets.hcch.net/docs/e7b6b267-49e9-4e02-b814-c0780e5b65e3.pdf> (While evidence requests received through diplomatic channels are not bound by the requirements of the Hague Evidence Convention, functionally OIJA would apply the same requirements outlined in this memorandum for letters rogatory requests sent pursuant to diplomatic channels. Thus, this form also provides helpful guidelines to Requesting Authorities submitting requests via diplomatic channels.).

d. *Expenses and Fees*

Generally, the United States is able to execute requests without reimbursement. However, the United States may seek direct payment or reimbursement for any third-party costs associated with obtaining the requested evidence. Most commonly, this involves service of process fees, court reporter fees for a deposition, laboratory fees for collection of a DNA sample, expert fees to produce a report, or fees for obtaining documents, such as medical records. Our office will provide information on where to make the payment so the foreign court or parties to the litigation can make the payment directly to the vendor. We will endeavor to notify the foreign court of any expenses we anticipate will need to be paid ahead of time. If OIJA does not receive a timely response to a request for confirmation to proceed with executing a request that will incur reimbursable costs, the request will be returned unexecuted.

e. *Form of Requests*

Requests should provide the information required under the Hague Evidence Convention and any other information necessary for execution.

i. Incomplete Requests

Requests should include all required information and any documentation necessary for the witnesses to respond. To the extent that a request seeks commentary or documentation relating to referenced exhibits or attachments to the request, those documents must be included with the request. If the exhibits are not included, OIJA will proceed with executing the request with instructions to the witness to forego answering any impacted questions. If a witness is unable to respond to a request in its entirety without the referenced documents, OIJA will return the request unexecuted to the Requesting Authority with instructions to resubmit with the necessary documents.

ii. Voluminous Requests

Requests comprised of hundreds of pages of documents should not be submitted to our office if those documents are not necessary for execution. Documents that are not essential for execution of the evidence request are unnecessary, may delay execution of the request, and may result in important information being overlooked. Valuable resources are also used to copy/scan all the documents, and to return the unnecessary documentation to the Requesting Authority.

iii. Duplicate Requests

Requesting Authorities should avoid transmitting duplicate requests to OIJA. Duplicate requests result in OIJA spending unnecessary time and resources reviewing and responding to requests that have already been processed. Requesting Authorities may seek a status update from OIJA at any time by emailing OIJA@usdoj.gov in lieu of submitting a duplicate request.

III. Requests that the United States is Unable to Execute

a. Investigations

In the United States, courts are unable to conduct factual investigations or hire private investigators. In addition, the United States does not maintain a central registry of its residents. Therefore, we are unable to execute requests seeking to obtain an individual's address or employer, assets and holdings, marital status, social and economic status, or other inheritance-related inquiries requiring investigation. We are also unable to execute requests that seek an investigation of the health and welfare of minors located in the United States. Requesting Authorities and parties to the litigation are free to independently hire investigators to obtain the desired information. Alternatively, the foreign country's embassy and consulate personnel may conduct "welfare and whereabouts" visits, and under certain circumstances, state child welfare offices may provide assistance if directly contacted by the Requesting Authority or litigants. *See* Vienna Convention on Consular Relations arts. 5(g)-(h), Apr. 24, 1963, 23 U.S.T. 3227, 500 U.N.T.S. 95. OIJA plays no role in such visits.

There are also several internet search engines that enable parties to locate an address of an individual and there are companies that perform "skip tracing," a phrase used to describe the process of locating individuals whose addresses are unknown. Once an address is identified, the parties are free to contact the individual to ascertain whether he or she will voluntarily provide the evidence, or the Requesting Authority may issue a request for international judicial assistance, which must include the witness's contact information and a list of questions to be posed to the witness. Requests may also be submitted to confirm whether an address is still valid, but only if sufficient identifying information is also provided about the individual and his or her last known address.

For social or economic investigations, one alternative is for the Requesting Authority to issue a request, identifying a witness with knowledge of the person's social or economic situation and providing a list of questions to be posed to that witness. For example, if the individual is, or has been, employed in the United States and the Requesting Authority can identify the employer(s), information regarding the individual's income can be solicited directly from the employer. We may also be able to obtain information regarding specific bank accounts (*see* Section IV.g).

b. Fishing Expeditions or Overly Burdensome Requests

Requests must be reasonable in breadth and scope. Requests that appear to be fishing expeditions or overly burdensome will be returned unexecuted. While the Federal Rules of Civil Procedure allow for extensive discovery, limitations on discovery do exist. *See* Fed. R. Civ. P. 26(b). For example, requests seeking records from numerous financial institutions will be returned unexecuted if the request does not provide information, such as account numbers or copies of records, showing a reasonable belief that the person of interest maintains accounts at those financial institutions. Similarly, requests for testimony with hundreds of questions will be returned unexecuted. A request must include no more than 100 questions per witness.

c. *Legal or Advisory Opinions*

Requests for legal opinions are outside the scope of judicial assistance OIJA can provide. U.S. courts cannot issue advisory opinions on legal issues. *Chafin v. Chafin*, 568 U.S. 165, 166 (2013) (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990)). See also Report on the Work of the Special Commission of May 1985 on the Operation of the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Part I, § 1(D). Therefore, requests seeking interpretations of law or legal opinions cannot be executed. In order to obtain a legal opinion, the parties may retain a private attorney licensed in the relevant U.S. jurisdiction to conduct legal research.

d. *Enforcement of a Judgment or Court Order*

Requests for enforcement of a judgment or court order are outside the scope of judicial assistance OIJA can provide. Additionally, we are unable to execute requests that ask for seizure of assets, garnishment of wages, transfer of property, or any other affirmative action. To enforce a foreign judgment or court order, seize assets, transfer property, or otherwise take any affirmative legal action in the United States, the parties should retain a private attorney who must file a civil action with the U.S. court that has jurisdiction over the person or property in question.

e. *Income Tax Information*

In the case of requests seeking income tax information from the U.S. Internal Revenue Service (“IRS”), the taxpayer or person authorized to request the tax records (in the case of a deceased taxpayer or business entity) can provide the requisite consent by filling out one of several IRS forms depending on the information requested. The IRS is only able to provide copies of records and cannot investigate or conduct research into a taxpayer’s tax history. Form 4506 (tax returns) and Form 4506T (tax transcripts) should be used to provide the required consent (forms and instructions available online at <https://www.irs.gov/uac/form-8821-tax-information-authorization>). The signed form must be received by the IRS within 120 days of the date of signature. Additionally, there is a \$50 fee for each tax return requested, and payment must be made by check or money order. There is no fee for obtaining tax transcripts. The individual who is authorized to provide consent should complete the form and designate the foreign court as the party to receive the records. If the IRS can provide any records, they will forward them directly to the foreign court. Our office is not involved in requests for records from the IRS. For more detailed guidance on how to request records from the IRS, please contact OIJA.

f. *Voluntary Testimony via Videoconference*

The United States occasionally receives requests for a deposition of an individual in the United States to be taken via videoconference and conducted by a judge or an attorney from a foreign country. OIJA is unable to execute this type of request as it does not ask the United States to directly obtain the evidence on behalf of the foreign court. OIJA will only execute requests that ask the United States, as the requested state, to obtain the evidence directly from the witness. Thus, OIJA cannot execute a request that asks us to set up a videoconference so that the foreign court or foreign attorney, rather than an attorney from the U.S. Department of Justice, can directly ask the questions. However, such a videoconference deposition is proper and does not violate U.S. law, so

long as the witness is voluntary. If that is the case, the deposition may be arranged for privately and OIJA plays no role in this process. No prior permission is needed from the U.S. Government to proceed with voluntary videoconference testimony.

If the witness, however, is unwilling to appear voluntarily for a videoconference deposition, the foreign court is welcome to submit a request to our office. In such a case, the foreign court would provide OIJA with the name and address of the witness and the specific questions that are to be asked of the witness. A Department of Justice Attorney would compel the witness to appear for a deposition by issuing a subpoena. Upon the request of the foreign court, interested lawyers for the parties or a foreign judge may be present at the deposition. At the deposition, the Department of Justice Attorney would ask the witness the questions that were provided in the request. Anyone present from the Requesting Authority at the deposition would only be permitted to ask follow-up or clarifying questions based on the questions submitted in the request. The transcript of the deposition would be returned to the foreign court by OIJA. For more information, please visit the U.S. Central Authority's Video-Link Profile: <https://assets.hcch.net/docs/b4f23c79-dc6f-41c8-a7f7-23906749750a.pdf>.

IV. Limitations on Certain Types of Requests

a. Obtaining Court Orders, Corporate Information, and Other Publicly Available Information

Publicly available information, such as copies of U.S. court judgments and orders, laws, company registration information, property records, etc., is considered by the United States to be beyond the scope of assistance that can be provided by our office, as it is not within the function of the U.S. judiciary to provide such documents.

The Requesting Authority or the parties to the litigation may obtain copies of court documents by identifying the relevant court and visiting that court's website. Using an internet search engine, the Requesting Authority or the parties can identify the relevant court's website by searching for the court by name. In addition, Public Access to Court Electronic Records ("PACER") is an electronic public access service that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts. PACER is available at www.pacer.gov. Note that some websites may require creating an account and/or payment to obtain documents. Most U.S. courts can directly provide certified court records for a fee that will need to be paid to the court by the Requesting Authority or parties to the litigation.

Company registration information can be obtained from the Secretary of State based on the state where the company is incorporated. For example, to obtain information about a company incorporated in California, visit the California Secretary of State's website: <http://www.sos.ca.gov/>. Please note certain states require payment for access to company information that will need to be paid by the Requesting Authority or parties to the litigation.

Property records are maintained by the counties in which the property is located. These records are publicly available and accessible through the relevant county website. In limited circumstances, OIJA may provide copies of records available online if the request provides

sufficient information to identify a specific property. OIJA cannot undertake investigations to locate all properties owned by a specific individual (*see* Section III.a).

b. *Vital Records*

Vital records such as birth certificates, death certificates, marriage certificates, and divorce decrees⁵ may be obtained from the local government of the state in which the relevant act occurred. The National Center for Health Statistics (<https://www.cdc.gov/nchs/w2w/index.htm>) provides links for information pertaining to each state's vital records. Certain individuals, as determined by the state and depending on the type of record, can order copies of vital records directly from the state or through VitalChek (<https://www.vitalchek.com/>).

If the Court or the litigants to the foreign proceeding are unable to obtain a vital record directly, our office may be able to produce the record by obtaining a court order pursuant to 28 U.S.C. § 1782. A request for vital records must provide the state that maintains the record and all information required by that state to release the record.

c. *Authorization to Obtain Social Security Records and Medical Records*

Under U.S. law, an individual's social security benefits and medical records are confidential and cannot be released without the signed authorization of the individual, his or her legal guardian, or legal representative.

i. Social Security Records

Social security records, maintained by the U.S. Social Security Administration ("SSA"), are confidential and cannot be released without the signed consent of the individual. A request for social security records must include the name, social security number ("SSN"), and birthdate of the person whose records are sought. If the SSN is not available, then the person's place of birth, mother's maiden name, or father's name must be provided in addition to the person's name and birthdate. The request must also provide background information that explains why the records are needed. The information and records sought must be clearly identified and described or the request will not be processed. Lastly, the consent form must include a clear and legible signature. *See* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203305003>.

When non-tax information, such as pension payments, social security benefits, etc., is sought, the individual should complete Form SSA-3288 to provide the required consent, available at <http://www.ssa.gov/online/ssa-3288.pdf>. This form must be filled out in its entirety and signed by the individual. The signed consent form must be received by SSA within one year of the date of the consenting individual's signature. Subject to a few exceptions, if the request seeks non-tax information regarding a deceased subject, those records can be released without consent when the request includes an acceptable proof of death. *See* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203315010>. For tax-related information, including earnings and employment information,

⁵ Please note that divorce judgments, outlining the terms of the divorce, are not publicly available documents and can only be obtained by a party to the proceeding or through a court order. However, it is possible for foreign courts or parties to the foreign litigation to obtain proof of the divorce in the form of a certificate or decree in certain jurisdictions.

Form SSA-7050-F4 must be used for an authorized individual to provide consent, available at <https://www.ssa.gov/forms/ssa-7050.pdf>. The consent form must be received by SSA within 120 days of the date of the consenting individual's signature. For more detailed information on how to properly request records from SSA, please contact OIJA.

ii. Medical Records

Under the U.S. legal system, information regarding an individual's medical records is confidential and cannot be released without the signed authorization of the individual or his or her personal representative. A patient or legal guardian of that patient may complete a patient authorization form. Under 45 C.F.R. § 164.502(g)(4), an executor, administrator, or other person having authority to act on behalf of the deceased or the deceased's estate will be treated as the personal representative of the individual. A valid authorization under the Health Insurance Portability and Accountability Act ("HIPAA") (45 C.F.R. § 164.508) may be obtained by completing the sample Medical Authorization Model Form that can be provided by OIJA or the authorization form provided by the relevant medical facility. OIJA is unable to execute the request if it includes an incomplete or incorrectly completed Authorization Form. The Form must be completed in English and signed by the individual. Unless the Form states otherwise, it expires one year after the date of the signature.

A request for medical records must also provide the name and contact information for the party responsible for paying the cost for the production of the medical records. The costs must be paid for directly before the requested medical records can be released.

While requests for medical records can be submitted to OIJA, for timely receipt of the records, we recommend that the foreign court or the parties to the litigation request the medical records directly from the medical facility. The Authorization Form can designate the foreign court as the recipient of the records. If the records cannot be obtained directly, a request may be submitted to our office. Please contact OIJA@usdoj.gov so OIJA can provide a sample Medical Authorization Model Form, sample Cover Letter, and Instruction Sheet.

d. *Border Crossing and Immigration Records*

In the United States, border crossing and immigration records are kept by different departments and agencies within the U.S. government. Therefore, the type of record sought will determine which department and agency handles the request.

U.S. Customs and Border Protection ("CBP") maintains certain records regarding entrances into and exits from the United States by any individual. In order to obtain these records, the request must include identifying information regarding the individual so that his or her records can be located. The request should include the individual's full name and birthdate, as well as passport number, if available. The request must also provide the time period or specific date for the requested records. Additionally, if the request seeks records relating to U.S. citizens or lawful permanent residents, the request should also include signed authorization for release of the records from the subject of the record.

U.S. Citizenship and Immigration Services ("USCIS") maintains records of an individual's immigration and citizenship status. In order to obtain these records, the request must

include identifying information regarding the individual so that his or her records can be located. The request should include the individual's name, birthdate, and place of birth. If available, please also provide any aliases, the individual's A-File number (U.S. immigration number), and SSN. In some situations, USCIS will be unable to locate the records (due to their age or lack of identifying information) or the individual will be protected by a confidentiality provision, and the records will therefore be unavailable.

Judicial requests for visa and U.S. passport information are directed to the U.S. Department of State, but release of these records will be made on a case-by-case basis. The Immigration and Nationality Act ("INA") § 222(f), 8 U.S.C. § 1202(f), provides that visa records are confidential and that, subject to limited exceptions, the information in visa records "shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality and other laws of the United States." Section 222(f)(1) gives the Secretary of State discretion to disclose certified copies of records, which may be made available to a foreign court that "certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court." For the U.S. Department of State to make the determination whether the evidence should be provided "in the interest of the ends of justice," the request must clearly articulate the reasons for which the information is sought and provide background information on the case that indicates why this evidence is needed for the determination of the case. Please note, even if all necessary information is provided, the U.S. Department of State has the discretion to choose to not provide the information.

e. *Import and Export Data*

U.S. Customs and Border Protection ("CBP") also maintains records on imports into and exports from the United States, including seizure information. Requests for import information should include sufficient information to identify the shipments in question or specifically describe the types of information being requested and a date range for a search. CBP is limited by statute regarding the circumstances under which it may provide export data and is specifically prohibited by law from providing export information for commercial enforcement purposes.

f. *Electronic Communications*

A request may be made to obtain information relating to electronic communications from an internet service provider (Google, Yahoo, Meta, etc.). However, internet service providers are not required to disclose the content of communications in the context of civil international judicial assistance requests. *See* Stored Communications Act (SCA), codified as 18 U.S.C. §§ 2701-2711. Likely, all that will be obtainable pursuant to a Letter of Request are customer user and registration records, which may include the customer's name, address, local and long distance telephone connection records, or records of session times and durations, length of service (including start date), and types of service utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment for such service (including any credit card or bank account number). These requests always require a court order, which the U.S. Central Authority, through a U.S. Attorney's Office, will obtain pursuant to 28 U.S.C. § 1782(a). In order for these requests to be executed, the request must include a copy of the foreign court order, with an English translation, explaining the specific evidence being requested and its relevancy to the foreign proceeding.

Please note, the First Amendment of the U.S. Constitution protects the right to free speech on the internet, including an author's right to remain anonymous. While this right is not unlimited, the level of protection afforded to a speaker depends on the circumstances and the type of speech at issue. Political speech is afforded the highest level of protection, while commercial speech is afforded a limited measure of protection. Additionally, U.S. courts have been clear in holding that internet service providers can assert First Amendment rights on behalf of their users. Where a request implicates First Amendment protections, before deciding whether to issue the court order, U.S. courts determine the nature of the speech involved and the type of analysis appropriate to use in balancing the parties' rights. When presented with requests for disclosure of the identity of an anonymous speaker, some courts will assume that the First Amendment applies and move immediately to the relevant analysis. *See, e.g., In re Yasuda*, 2020 WL 759404, at *6 (N.D. Cal. Feb. 14, 2020). Other courts, however, note that First Amendment protections are contingent upon U.S. citizenship. *See Zuru, Inc. v. Glassdoor, Inc.*, 614 F. Supp. 3d 697, 706-08 (N.D. Cal. 2022). Regardless of the type of analysis chosen, U.S. courts must be provided with sufficient information regarding the underlying cause of action and proceedings, as well as the relevancy of the evidence requested, in order to determine whether to issue a court order compelling the evidence. If OIJA is not provided sufficient information for this type of analysis, the request will be returned unexecuted. In particular, these requests should provide whether the accountholder is a U.S. citizen, if known.

g. Bank Records

To obtain bank records, the request must include information regarding specific bank accounts. The request must include the name of the bank in which the account is held and sufficient information to identify the relevant accounts, such as the full name of the account holder, the account number, and preferably other personal identifying information (the social security number, address of the individual, birthdate, etc.). Requests that only provide the name of the bank and the name of the individual cannot be executed; additional identifying information about the individual is required. Some financial institutions require at least three pieces of identifying information before they will release records. Thus, requests should preferably include as much identifying information as possible. Requests for bank records require a court order, which the U.S. Central Authority itself, or through a U.S. Attorney's Office, will apply for the authority to issue a subpoena pursuant to 28 U.S.C. § 1782(a). In addition, every major financial institution has a national subpoena processing office. While a request should identify a particular bank branch or location, these requests will usually be referred to the appropriate nationally designated office. Please note, per U.S. federal law, financial institutions only keep customer and company records for up to 7 years, or at most 10 years.

If the request is seeking evidence from any of the affiliates of J.P. Morgan Chase Bank N.A. (including Chase Bank N.A., Chase Bank USA, etc.), please include "J.P. Morgan Chase Bank N.A." as a witness in the request. For records from Bank of America, the request must include the time period for which records are being requested. Lastly, Bank of New York is no longer a legal entity; therefore, please name "The Bank of New York Mellon Corporation" or "The Bank of New York Mellon" as the witness. If we receive requests for these institutions that do not follow these guidelines, we will return them unexecuted.

h. *Insurance Records*

Requests for records from insurance companies must also provide sufficient identifying information, such as an account number, social security number, address of the individual, birthdate, etc., to identify the relevant records. Without this information, the request will be returned unexecuted.

i. *DNA Samples*

Requests for DNA samples must include the names of the mother, child, and putative father along with his current address. If possible, the birthdate or social security number of the putative father should also be provided. The request must also provide sufficient facts to show there is a basis to believe the witness could be the father of the child in question. If we are not provided sufficient background information to clearly identify the putative father and his potential connection to the child, we will proceed with executing the request only on a voluntary basis. Thus, if the witness refuses to provide the sample voluntarily, the request will be returned unexecuted. Additionally, the foreign medical laboratory tasked with analyzing the DNA sample must supply the materials to be used for obtaining the sample (buccal swab kit), provide instructions for obtaining the DNA sample, and indicate what identification documents should be provided by the individual at the time of taking the sample (photo, fingerprints, copy of passport). Per office policy, DNA samples must be obtained by less intrusive means, such as buccal swabs, so OIJA is unable to execute requests for blood samples. The request must also include an address where the sample should be returned that is not a P.O. Box since we mail all materials and documents by FedEx. Please note that there may be costs associated with obtaining a DNA sample if a private laboratory is used that will need to be reimbursed (*see* Section II.d).

j. *Experts*

We are unable to execute requests for the appointment of an unspecified expert to conduct an investigation or an audit and prepare a report. However, under very limited circumstances, where the Requesting Authority identifies a specific expert to perform a clearly defined act and has pre-arranged for the direct payment for the expert's services, we can contact that expert and execute the request. The request must also provide a point of contact for the entity of interest and assurances that the entity will allow the expert access to its records. If the request requires the expert to review and analyze documents from an entity that will not allow the expert access to its premises or will not otherwise provide the documents voluntarily, a separate request must be submitted to obtain clearly identified records, which OIJA will do by obtaining a court order and issuing a subpoena. Once the documents are received, the documents will be forwarded by OIJA to the expert for his or her examination. This type of request is uncommon and to date has been limited to accounting experts reviewing clearly identified company records. For detailed information on how to properly request an expert report, please contact OIJA.

V. **28 U.S.C. § 1782**

Section 1782 is the judicial assistance statute in the United States and “is the product of congressional efforts, over the span of nearly 150 years, 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). Under § 1782, upon application to a U.S. Court, an individual is appointed “commissioner,” which enables them to issue a Commissioner’s Subpoena to compel the evidence. This process is routinely used by OIJA to obtain requested evidence. However, in order to file an application in district court, the request must provide certain minimum information, which is outlined throughout the remainder of this guidance memorandum. Section 1782 also permits evidence gathering directly in the United States through two separate processes outlined below.

a. *Obtaining Evidence through U.S. Courts Directly*

Under U.S. law, any “interested party” can file an application pursuant to 28 U.S.C. § 1782(a) with a U.S. District Court and ask the Court to compel production of evidence in the United States in support of foreign litigation. *See* 28 U.S.C. § 1782(a). OIJA would not be involved in such a proceeding initiated by private parties.

b. *Obtaining Evidence from Witnesses Directly on a Voluntary Basis*

Under U.S. law, any person or entity in the United States may voluntarily provide evidence for use in a foreign proceeding without prior approval or involvement from the U.S. Government or OIJA. *See* 28 U.S.C. § 1782(b). OIJA does not need to be involved in obtaining such evidence.

VI. Contact Information

Please note that while all court documents need to be translated into English, we can communicate in Spanish by email. Should you have any additional inquiries, please feel free to contact us at OIJA@usdoj.gov or by telephone at +1-202-514-6700.