APPENDICES

APPENDIX
TABLE OF CONTENTS

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55447
D.C. No. 2:19-cv-09204-DDP-JC

UNITED STATES OF AMERICA,
Petitioner-Appellee,
v.

JEHAN AGRAMA,
Respondent-Appellant.

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted April 19, 2023
Pasadena, California
Filed: July 12, 2023

MEMORANDUM[*]

Before: Wardlaw and Koh, Circuit Judges, and McMahon,[**] District Judge.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Colleen McMahon, United States District Judge for the Southern District of New York, sitting by designation.

Frank Agrama appeals from the district court's order enforcing an Internal Revenue Service ("IRS") summons that requires Agrama to appear and produce for examination certain records, including records related to his prosecution for tax crimes in Italy.[1] Agrama argues that the summons was issued in bad faith and that, at a minimum, the district court erred by ordering enforcement of the summons without an evidentiary hearing.

We have jurisdiction under 28 U.S.C. § 1291. We review for clear error the district court's decision to enforce the summons. *See United States v. Richey*, 632 F.3d 559, 563 (9th Cir. 2011) (citing *David H. Tedder & Assocs., Inc. v. United States*, 77 F.3d 1166, 1168 (9th Cir.1996)). We review the district court's decision not to hold an evidentiary hearing for abuse of discretion. *See United States v. Clarke*, 573 U.S. 248, 255-56 (2014) (citations omitted). We affirm.[2]

The district court did not clearly err by enforcing the summons, nor did it abuse its discretion by denying Agrama an evidentiary hearing. To enforce an IRS summons, the Government must make a prima facie showing that the summons was issued in good faith. *See Crystal v. United States*, 172 F.3d 1141, 1143-44 (9th Cir. 1999).

---

[1] Respondent-Appellant Frank Agrama passed away on April 25, 2023, shortly after oral argument was heard on this appeal. Jehan Agrama, the daughter of Frank Agrama and the co-trustee of the Agrama Trust, which is the custodian of the summonsed records, has filed an unopposed motion to be substituted as respondent-appellant pursuant to Federal Rule of Appellate Procedure 43(a)(1). That motion is GRANTED. However, in this memorandum disposition we refer to the decedent, Frank Agrama, as the Respondent-Appellant.

[2] The parties are familiar with the facts of this case, so we include them only as necessary to resolve the appeal.

The Government does so by showing that (1) the investigation will be conducted pursuant to a legitimate purpose; (2) the information sought may be relevant to that purpose; (3) the information sought is not already within the IRS's possession; and (4) the administrative steps required by the Internal Revenue Code have been followed. *United States v. Powell*, 379 U.S. 48, 57-58 (1964). The Government's burden "is a slight one, and may be satisfied by a declaration from the investigating agent that the *Powell* requirements have been met." *Richey*, 632 F.3d at 564 (quoting *United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993)).

If the Government meets its burden, the taxpayer challenging the summons then has the "heavy" burden of proving either lack of institutional good faith or an abuse of process. *United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 314-16 (1978). There is an abuse of process if the summons was "issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *Powell*, 379 U.S. at 58. A taxpayer challenging a summons is entitled to an evidentiary hearing only when "he can point to specific facts or circumstances plausibly raising an inference of bad faith." *Clarke*, 573 U.S. at 254.

The district court did not err by concluding that the Revenue Agent's declaration was sufficient to meet the Government's initial burden to show good faith, as the Agent's declaration indicates that each of the *Powell* factors are met. Moreover, the district court did not clearly err in rejecting Agrama's contention that the IRS did not meet the third *Powell* factor. The third *Powell* factor serves to prohibit the issuance of "unnecessary summonses that are designed to 'harass the taxpayer' or that

otherwise abuse the court's process." *Action Recycling Inc. v. United States*, 721 F.3d 1142, 1146 (9th Cir. 2013) (citing *Powell*, 379 U.S. at 54-59). But "[it] was not designed … to obstruct the ability of the IRS to obtain relevant information necessary to a legitimate investigation." *Id.* (citing *United States v. Euge*, 444 U.S. 707, 711 (1980). Pursuant to that goal, we have long held that the IRS may issue a summons to confirm the completeness and accuracy of documents obtained from another source. *See Liberty Fin. Servs. v. United States*, 778 F.2d 1390, 1393 (9th Cir. 1985).

Although the IRS concedes that it already possesses some of the material covered by the summons, the agency does not possess all of the summonsed documents, and it knows that at least some documents in its possession are incomplete. Agrama offers no evidence to prove—or even to raise a plausible inference—that the IRS summons is motivated by anything other than a desire to ensure that it has accurate and complete copies of anything it has obtained from other sources. And since it was unnecessary to determine to what extent documents in the IRS's possession were duplicative of the documents sought, the district court did not abuse its discretion by denying Agrama an evidentiary hearing on this point.

Agrama also argues that he is barred from producing the so-called Mutual Legal Assistance Treaty ("MLAT") documents because Italy could not itself produce those documents to the IRS without first obtaining permission from Hong Kong, Switzerland, and Ireland, per the terms of the relevant MLATs. But he offers no evidence that the laws of Italy or the terms of the MLATs would be offended by *his* production of the MLAT documents that are in *his* possession in connection with a U.S. investigation into *his* conduct as a U.S.

citizen. As such, he cannot challenge enforcement of the summons on the ground that principles of international comity demand nonenforcement. *See United States v. Vetco Inc.*, 691 F.2d 1281, 1289 (9th Cir. 1981) ("The party relying on foreign law has the burden of showing that such law bars production.").

Agrama next argues that it is an abuse of judicial process to seek court enforcement of a summons issued in connection with an investigation that "intensified" because of information obtained during an unconstitutional search. *United States v. Beacon Fed. Sav. & Loan*, 718 F.2d 49, 53 (2d Cir. 1983). Agrama claims that the "scope or focus" of the current IRS investigation, and of this summons specifically, was shaped and intensified by evidence derived from the Federal Bureau of Investigation's ("FBI") illegal search of his Los Angeles home in 2006. Specifically, Agrama claims that the IRS's current investigation was spurred by information from an Italian forensic accountant, Gabriela Chersicla, who was present during the FBI's 2006 search. Agrama presses this claim even though the report Chersicla produced at the behest of Italian prosecutors ("Chersicla Report") was based not on the FBI's search, but on review of documents seized in Hong Kong in 2007.

Agrama's argument is flawed both legally and factually. Because Agrama concedes that the FBI—not the IRS—conducted the 2006 search of his premises, enforcement of the IRS summons would not constitute an abuse of judicial process absent proof of cooperation between the FBI and IRS. *See Grimes v. Comm'r*, 82 F.3d 286, 290 (9th Cir. 1996) (holding that evidence illegally obtained by other law enforcement agencies should not be suppressed in an IRS civil tax proceeding unless there is "an agreement between agencies"). Notably, *Beacon*—the Second Circuit case on which Agrama

principally relies—is inapplicable on the facts before us because it concerns an illegal search *that was conducted by the IRS*. *See* 718 F.2d at 53-55.

Further, the district court correctly concluded that receipt of the Chersicla Report did not shape the "scope or focus" of the IRS' investigation into Agrama. Agrama's argument that the IRS's investigation was shaped by the Chersicla Report rest on little more than speculation. In fact, even if the IRS never obtained the Chersicla Report, it would have opened an investigation into Agrama: in February 2013, months before the Chersicla Report was completed, Agrama was expelled from the IRS's voluntary disclosure program for failure to disclose his criminal indictment in Italy, and IRS rules mandate the automatic examination of any taxpayer removed from the voluntary disclosure program.

Even assuming *arguendo* that the "scope or focus" of the IRS investigation was somehow impacted by the Chersicla Report, Agrama does not identify anything in that Report, or in any of other MLAT documents, that qualifies as privileged information—information that should not have been seen by Italian authorities during the 2006 FBI search. Agrama possesses the summonsed documents, so he should be able to identify any arguably tainted information they contain. As he did not do so, he failed to demonstrate that enforcement of the summons would constitute an abuse of process.

Finally, Agrama asserts that the summons should not be enforced because the IRS obtained the Chersicla Report from the Italian government in contravention of the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion, It.-U.S., Aug. 25, 1999, T.I.A.S. No. 09-1216 ("Tax Treaty"). There is no evidence that

the IRS obtained the Chersicla Report via the Tax Treaty; the agency was given the Chersicla Report by a U.S. government official in Italy. Because Agrama failed to advance any factual allegations suggesting that the Chersicla Report was obtained illegally, the district court did not abuse its discretion by denying Agrama's request for a hearing on this issue.

AFFIRMED.[3]

[3] In light of a new argument raised by the Government on appeal, Agrama moves to supplement the record with, or for the court to take judicial notice of, a 2006 email exchange. However, our affirmance is limited to the grounds relied upon by the district court, so Agrama's motion is DENIED as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 19-09204 DDP (JCx)
[Dkt 18, 23]
Filed December 2, 2020

UNITED STATES OF AMERICA,
Petitioner,
v.

FRANK AGRAMA,
Respondent.

ORDER DENYING RESPONDENT'S MOTION FOR EVIDENTIARY HEARING

Presently before the court is Respondent Frank Agrama's Motion for Evidentiary Hearing.[1] Having considered the submissions of the parties, the court denies the motion for evidentiary hearing and adopts the following Order.

I. Background[2]

In 2006, an Italian prosecutor sought, pursuant to a Treaty on Mutual Legal Assistance in Criminal Matters

[1] Although not styled as a motion to quash, Agrama also asks that this Court quash the IRS summons that the agency has petitioned the court to enforce.

[2] The facts recited here are drawn from the filings in this matter, as well as those in a related matter, *In Re Search of Harmony Gold USA Inc.*, No. 06-cv-07663-DDP-JC.

("MLAT") between Italy and the United States, U.S. government assistance with an Italian investigation of Respondent Frank Agrama ("Agrama"). Accordingly, FBI agents obtained and executed search warrants for Agrama's home and business in Los Angeles. Italian authorities, including forensic accountant Gabriela Chersicla ("Chersicla") were present during the searches.

Soon after, Agrama asked this Court to order the FBI to return property and documents seized during the searches. Agrama contended, among other things, that the affidavits underlying the search warrants were defective, that FBI agents failed to follow search protocols set forth in the warrants, and that many of the documents seized were privileged. After initially opposing Agrama's motion for return of property, the government ultimately withdrew its opposition, acknowledged that agents had erred in certain respects, agreed that the search warrants should be withdrawn, and agreed to return all property, without transmitting or providing any copies of any documents to Italy or the Italian prosecutors. This Court entered an order to that effect, with which the government complied.

In 2009, Agrama and his wife sought to participate in the Internal Revenue Service's voluntary disclosure program regarding foreign bank accounts. As part of that process, the Agramas represented that they were not under criminal investigation by any law enforcement authority. The IRS preliminarily and conditionally accepted the Agramas' voluntary disclosure and, on the basis of that disclosure, began a review of the Agramas' 2009 tax return.

In 2012, the IRS learned that Agrama was, in fact, under criminal indictment in Italy. Indeed, Agrama was convicted of tax evasion later that year in Italy, and

received a three-year sentence. The Agramas were subsequently removed from the IRS' voluntary disclosure program in early 2013.

In the meantime, and indeed even prior to the 2006 MLAT request to the United States, Italian prosecutors also sought assistance from the governments of Switzerland, Hong Kong and Ireland pursuant to MLATs between Italy and each of those foreign entities. As with the FBI searches in the United States, Italian forensic accountant Chersicla was present during searches executed in Hong Kong in 2007. Italian prosecutors were eventually able to obtain, over Agrama's objections, documents from all three other jurisdictions (the "MLAT documents"). In December 2013, Chersicla authored a report analyzing documents obtained from Hong Kong ("the Chersicla Report"). The Chersicla Report and all MLAT documents were, consistent with all applicable treaties and laws, provided to Agrama in the course of criminal proceedings against him in Italy.[3]

At some point after the Agramas' expulsion from the IRS' voluntary disclosure program in early 2013, and after the publication of the Chersicla report in December 2013, the IRS initiated an audit of the Agramas and, eventually, Agrama's business. The IRS is currently investigating the Agramas' tax liability for fourteen tax years, ranging from 1997 to 2011. In connection with that examination, the IRS issued a summons in 2018 directing Agrama to produce documents, including all documents related to Agrama's two criminal trials in Italy, documents related to Agrama's challenge to Italy's MLAT request to Ireland, and all documents provided to the Italian government from other countries,

[3] Although Agrama was convicted of tax evasion in Italy in 2012, he was later acquitted of further charges in 2016.

including Hong Kong, relating to Agrama's two trials in Italy (i.e., the MLAT documents). Although Agrama provided some documents to the IRS, he has not provided any MLAT documents. Accordingly, the IRS has petitioned this Court to enforce the summons and require Agrama to produce the MLAT documents.

Agrama contends that the summons should be quashed because it was issued in bad faith. In the alternative, Agrama requests an evidentiary hearing to determine whether the summons was issued for a proper purpose.

II. Discussion

To obtain judicial enforcement of a summons, the IRS need only show that the summons was issued in good faith. *United States v. Clarke*, 573 U.S. 248, 250 (2014). Indeed, this Court's inquiry is limited to that narrow question. *Id.* at 254. The IRS meets its burden by demonstrating that (1) the investigation has a legitimate purpose, (2) the inquiry may be relevant to that purpose, (3) the IRS does not already possess the information it seeks, and (4) the IRS has followed the procedures required by the Internal Revenue Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964). This Court has already determined that the government has made such a prima facie showing. (Order to Show Cause, Dkt. 14.) Although summons enforcement proceedings are "summary in nature," a respondent is nevertheless entitled to contest an IRS summons "on any appropriate ground." *Clarke*, 573 U.S. at 250, 254. A taxpayer seeking an evidentiary hearing "need only make a showing of facts that give rise to a plausible inference of improper motive." *Id.* "Naked allegations of improper purpose[, however,] are not enough." *Id.*

A. Prior Possession

Agrama argues first that the summons in question was issued in bad faith because the IRS already possesses the information it seeks. The IRS does not dispute that it already possesses portions of some documents, such as the Chersicla Report, that fall within the ambit of the summons. The IRS represents, however, that it has no way of knowing whether the documents it does possess are complete. And, in the case of the Chersicla Report, the IRS knows that its copy is *not* complete, and that the full report includes nearly 250 exhibits, none of which are attached to the IRS' copy. Under these circumstances, this Court cannot agree that the IRS improperly seeks information that is already in its possession.

Although Agrama asserts that "the Supreme Court's mandate is clear" that this Court cannot enforce a summons that seeks any information already possessed by the IRS, this Court does not read *Powell* as dogmatically as Agrama would urge. In *Powell*, the Court agreed that a statutory mandate that "[n]o taxpayer shall be subjected to unnecessary examination or investigations" "does appear to require that the information sought is not already within the [IRS]' possession." 26 U.S.C. § 7605(b); *Powell*, 379 U.S. at 56. Nevertheless, the Court explained, the clause's "primary purpose was no more than to emphasize the responsibility of agents to exercise prudent judgment in wielding the extensive powers granted to them by the Internal Revenue Code." *Powell*, 379 U.S. at 56. The Court further explained that an abuse of the judicial enforcement process would occur "if the summons had been issued for an improper purpose, *such as to harass the taxpayer* … ." *Id.* at 58 (emphasis added). The Ninth Circuit, discussing the third *Powell* factor (i.e., the "already

possesses" factor), has similarly held that the "limitation prevents unnecessary summonses that are designed to harass the taxpayer, or that otherwise abuse the court's process." *Action Recycling Inc. v. United States*, 721 F.3d 1142, 1146 (9th Cir. 2013) (internal quotation marks omitted). Notably, moreover, the Ninth Circuit interpreted the third *Powell* factor to forbid a repeat summons to a taxpayer "[w]here the IRS already possesses copies of particular records *obtained from the taxpayer*." *Id.* "This limitation was not designed, however, to obstruct the ability of the IRS to obtain relevant information necessary to a legitimate investigation." *Id.*

Here, Agrama does not contend that any of the information the IRS seeks, but may already possess, has already been produced by Agrama himself. Nor, to the extent that the IRS does seek information it already possesses, is there any indication that the IRS' efforts are motivated by any intent to harass Agrama. Rather, as discussed above, the IRS seeks to complete partial documents in its possession, or to determine whether documents in its possession are, in fact, complete. Under these circumstances, *Powell* cannot be read to require that the summons be quashed. *See Action Recyling*, 721 F.3d at 1145-46 (interpreting *Powell* as "cautioning against a stringent interpretation that could hamper the [IRS] in carrying out investigations [it] thinks warranted, and noting that the legislative history of § 7605(b) indicates that no severe restriction was intended." (internal quotation marks omitted)).

B. Circumvention of Treaties

The MLAT treaties between Italy and Hong Kong, Ireland, and Switzerland restrict, to varying degrees, the requesting government (in this case, Italy)'s use of

any information provided by the MLAT treaty partner.[4] Agrama contends that the IRS' true purpose in seeking MLAT documents from Agrama is to circumvent the various MLATs' restrictions, and that this improper purpose merits quashal of the summons. This argument is not persuasive. As an initial matter, Agrama cites to a series of cases that are largely inapt. With one exception, none concerns an IRS summons, and all involved an attempt to obtain information located in foreign countries. *See Societe Internationale v. Rogers*, 357 U.S. 197 (1958) (Swiss bank records); *Ings v. Ferguson*, 282 F.2d 149, 150 (2d Cir. 1960) (bank records located in Canada); *Application of Chase Manhattan Bank*, 297 F.2d 611, 611 (2d Cir. 1962) (bank records located in Panama).

Furthermore, and more fundamentally, Agrama provides no explanation how an IRS summons to a private United States citizen in the United States could possibly implicate any obligations the government of Italy may owe to any other foreign entity. *United States v. Vetco Inc.*, 691 F.2d 1281, 1288 (9th Cir. 1981), is of little aid to Agrama. In *Vetco*, the IRS sought records that were not only located in Switzerland, but the divulgence of which might also subject the U.S. respondents to criminal penalties in Switzerland. The Ninth Circuit applied a five-factor test "in determining whether foreign illegality ought to preclude enforcement of an IRS summons," and concluded that, under the circumstances present in *Vetco*, the national interests at stake, the hardship to respondents, the location of production, the importance of the records, and the availability of alternate means of compliance weighed in favor of enforcing the

[4] Although Agrama represents, and the government does not dispute, that this is true of the MLAT treaty between Italy and Switzerland, Agrama does not provide a reference to an English-language version of the relevant treaty.

summons, notwithstanding the possibility of criminal prosecution in Switzerland. *Vetco*, 691 F.2d at 1288-90. Here, although a weighing of the relevant considerations would yield a similar conclusion, the court need not consider each of the five *Vetco* factors because Agrama has not made a threshold showing that his compliance with the summons would violate any foreign law. *See Vetco*, 691 F.2d at 1289 ("The party relying on foreign law has the burden of showing that such law bars production."). Put simply, no MLAT between Italy and any other entity puts any restriction on Agrama's ability to produce documents in his possession or control.[5]

C. Tainted Investigation

Illegal, and particularly unconstitutional, conduct by IRS agents may so compromise the good faith of an investigation as to render any judicial enforcement of a related summons an abuse of judicial process. *United States v. Beacon Fed. Sav. & Loan*, 718 F.2d 49, 53 (2d Cir. 1983); *Gluck v. United States*, 771 F.2d 750, 756 (3d Cir. 1985). Agrama argues that the summons should be quashed because the investigation of which it is a part is tainted by the government's unlawful actions, namely (1) the allegedly unconstitutional searches executed by the FBI in 2006 and (2) the IRS' illegal procurement of MLAT documents, including the Chersicla Report.

---

[5] The court notes that Agrama appears to have largely abandoned this line of reasoning in his Reply, arguing only briefly that to enforce the summons "would involve the court in the IRS's efforts to circumvent [] legal restrictions" and that "[p]rinciples of international comity require that domestic courts not take action that may cause violation of another nation's laws." (Reply at 9.) As explained above, however, Agrama has made no showing that his production of the requested documents would violate any foreign law.

1. Fruit of the illegal 2006 searches

The alleged link between the investigation of which the instant petition to enforce is a part and the allegedly unconstitutional 2006 searches is a tortured and tenuous one. First, Agrama asserts that the IRS' current investigation, spanning fourteen tax years, is premised upon the Cheriscla Report. This assertion appears to be supported by little more than speculation and the lone fact that the IRS' audit post-dated the issuance of the Chersicla Report. The audit also post-dated, however, Agrama's voluntary disclosure to the IRS in 2009, not to mention the Agramas' expulsion from the voluntary disclosure program in early 2013 in the wake of the revelation that, contrary to his representation to the IRS, Agrama had in fact been investigated by Italian authorities and was ultimately convicted of tax evasion.

The implausible assertion that the IRS' entire investigation is based upon the Chersicla Report is, furthermore, but the first implausible inference necessary to connect the current summons to the 2006 searches. Agrama concedes that the Chersicla Report is an analysis of documents obtained in Hong Kong, not Los Angeles. Indeed, as explained above, the FBI never transmitted any of the documents seized in Los Angeles in 2006 to Chersicla or any other Italian authority. Nevertheless, Agrama contends that the Hong Kong documents "did not supernaturally bring themselves to the attention of the Italian prosecution team," and that Chersicla "unavoidably would have used knowledge gained through the unconstitutional searches in Los Angeles."[6] (Reply at 5:15-16, 19-20.)

---

[6] Although the Hong Kong search occurred after the Los Angeles search, the MLAT request to Hong Kong predated the MLAT request to the United States.

In other words, the argument goes, the instant summons, issued in 2018, is the fruit of the poisonous tree because (1) the audit from which the summons stems began in 2013, after the issuance of the Chersicla Report, and therefore must have been premised upon that report, which (2) although based upon Hong Kong documents, was able to focus on certain of those documents only because (3) Chersicla was able to glean crucial guiding information from privileged material while physically present for improper searches in Los Angeles in 2006, even though she never received copies of any of the documents seized. Even putting aside the question whether any improper conduct by FBI agents in 2006 calls into question the good faith of IRS agents investigating Agrama years later, the facts alleged here are far too speculative to raise even a plausible inference that the summons at issue here is, by way of Hong Kong and Italy, the fruit of a poisonous tree planted in Los Angeles in 2006.

2. Illegal acquisition of MLAT documents

Agrama also argues that, putting aside the issues with the 2006 searches, the investigation underlying the summons is tainted because the MLAT documents upon which the investigation is premised, including the Chersicla Report, were illegally obtained by the IRS. First, this argument too is premised upon the assumption that the IRS' investigation was motivated by the Chersicla Report. As discussed above, that contention is not plausible, particularly in light of Agrama's voluntary disclosure and apparent misrepresentation of his legal status.

Even assuming, for the sake of argument, that the investigation was spurred by the Chersicla report, Agrama does no more than speculate that the IRS obtained the report, and other MLAT documents, illegally.

Agrama asserts that a separate, double-taxation treaty between the United States and Italy allows for the exchange of tax-related information only by designated competent authorities, namely the Secretary of the Treasury or his delegate. Agrama further asserts that any such delegate "would likely have known about and respected" MLAT restrictions on the use of MLAT information. (Reply at 7:9-20). In other words, a U.S. designee would have known that Italy was not free to divulge MLAT information obtained from another country, and the U.S. delegate would therefore have refused to accept any MLAT document proffered by any Italian authority.[7] Thus, the argument seems to go, the IRS must have received the Chersicla Report outside of the treaty process and, therefore, illegally. Bare assertions, however, of what a U.S. Treasury delegate "would likely have known," or would have done under certain circumstances, and that the IRS could not possibly have obtained documents any other legitimate way, do not give rise to a plausible inference that the IRS did anything illegal or in bad faith.[8] *See also Gluck*, 771 F.2d at 757 ("It is clear … that quashal of a summons does not follow automatically from improper agency conduct.").

---

[7] Although Agrama asserts that IRS agents revealed that the IRS obtained documents "through channels or through the US attaché," it is not clear to the court how such a statement suggests any illegality.

[8] The government asks that the court consider an in camera submission detailing the legal means by which the IRS obtained the Chersicla Report. Because Agrama's contention that the document was illegally obtained is speculative, the court need not review, and has not reviewed, the government's in camera submission. The government's ex parte application for leave to file the in camera submission is, therefore, denied as moot.

IV. Conclusion

For the reasons stated above, Respondent's Motion for an Evidentiary Hearing is DENIED. A separate order compelling Respondent to comply with the summons shall issue.

IT IS SO ORDERED.

Dated: DECEMBER 2, 2020 /s/ Dean D. Pregerson
DEAN D. PREGERSON
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:19-cv-09204-DDP-JC

UNITED STATES OF AMERICA,
Petitioner,

v.

FRANK AGRAMA,
Respondent.

Filed March 9, 2022

ORDER ENFORCING INTERNAL REVENUE SERVICE SUMMONS

This matter having been submitted to the Court on the Petition of the United States of America to enforce Internal Revenue Service summons directed to respondent Frank Agrama, the Court, having considered the matter on the papers, and for good cause shown, it is hereby

ORDERED that the Petition of the United States of America for enforcement of the IRS summons directed to Frank Agrama is granted and the IRS summons is enforced. Frank Agrama is to appear before Internal Revenue Service Revenue Agent James Pack, or any other proper officer or employee of the Internal Revenue Service, within 30 days of this Order and produce for

examination books, records, papers and other data as required by the summons.

Dated this 9th of March, 2022

[Signature]
HONORABLE DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55447
D.C. No. 2:19-cv-09204-DDP-JC

UNITED STATES OF AMERICA,
Petitioner-Appellee,
v.

JEHAN AGRAMA,
Respondent-Appellant.

Filed September 21, 2023

ORDER

Before: WARDLAW and KOH, Circuit Judges, and MCMAHON,[*] District Judge.

The panel has unanimously voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Therefore, both the petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

[*] The Honorable Colleen McMahon, United States District Judge for the Southern District of New York, sitting by designation.

No future petitions for rehearing or rehearing en banc will be accepted.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55447
D.C. No. 2:19-cv-09204-DDP-JC

UNITED STATES OF AMERICA,
Petitioner-Appellee,
v.

JEHAN AGRAMA,
Respondent-Appellant.

Filed November 3, 2023

ORDER

Before: WARDLAW and KOH, Circuit Judges, and MCMAHON,[*] District Judge.

Appellant's Motion to Stay Issuance of the Mandate (Dkt. 49) is granted. Fed. R. App. P. 41(d). The mandate is stayed for 90 days pending the filing of a petition for a writ of certiorari in the Supreme Court. Appellant must notify this court in writing that the petition has been filed, in which case the stay will continue until the Supreme Court resolves the petition. Should the Supreme Court grant certiorari, the mandate will be stayed pending disposition of the case. Should the Supreme Court deny certiorari, the mandate will issue immediately.

[*] The Honorable Colleen McMahon, United States District Judge for the Southern District of New York, sitting by designation.

The parties shall inform this court immediately upon the Supreme Court's decision.

APPENDIX F

RELEVANT STATUTORY PROVISIONS

26 U.S.C. § 7602

§7602. Examination of books and witnesses

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense

The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties

(1) General notice

An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer unless such contact occurs during a period (not greater than 1 year) which is specified in a notice which—

(A) informs the taxpayer that contacts with persons other than the taxpayer are intended to be made during such period, and

(B) except as otherwise provided by the Secretary, is provided to the taxpayer not later than 45 days before the beginning of such period.

Nothing in the preceding sentence shall prevent the issuance of notices to the same taxpayer with respect to the same tax liability with periods specified therein that, in the aggregate, exceed 1 year. A notice shall not be issued under this paragraph unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. The preceding sentence shall not prevent the issuance of a notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be

obtained by such contact will not be obtained by other means before such contact.

(2) Notice of specific contacts

The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions

This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral

(1) Limitation of authority

No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect

For purposes of this subsection—

(A) In general

A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination

A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws

which was instituted by the Attorney General against such person, or

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

(3) Taxable years, etc., treated separately

For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income

The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(f) Limitation on access of persons other than Internal Revenue Service officers and employees

The Secretary shall not, under the authority of section 6103(n), provide any books, papers, records, or other data obtained pursuant to this section to any person authorized under section 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the Internal Revenue Service. No person other than an officer or employee of the Internal Revenue Service or the Office of Chief Counsel may, on behalf of the Secretary, question a witness under oath whose testimony was obtained pursuant to this section.

26 U.S.C. § 7605

§7605. Time and place of examination

(a) Time and place

The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421(g)(2), or 6427(j)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

(b) Restrictions on examination of taxpayer

No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) Cross reference

For provisions restricting church tax inquiries and examinations, see section 7611.

APPENDIX G

Agreement

between Switzerland and Italy supplementing the European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 and facilitating its application

* * *

Art. IV Use of information (Specialty)

1. Information obtained through assistance may not be used, in the requesting State, for investigation purposes or be produced as evidence in any proceedings relating to a crime for which assistance is ruled out.

2. The prohibition on using obtained information refers to facts that have a political, military or fiscal nature for the State receiving the request. A fact has a fiscal nature when it appears to be aimed at reducing taxes or violates monetary, commercial or economic policy measures. This prohibition also extends to administrative procedures of a fiscal nature. Cases of tax fraud pursuant to Article II, paragraph 3 of this Agreement are excluded.

3. The transmission of the information referred to in paragraph 1 of this Article to a third-party State is subject to authorization by the State receiving the request.

* * *

APPENDIX H

Agreement between
the Government of the Hong Kong Special Administrative Region of
the People's Republic of China
and
the Government of the Italian Republic
Concerning
Mutual Legal Assistance in Criminal Matters

* * *

ARTICLE I
SCOPE OF ASSISTANCE

* * *

(3) Assistance under this Agreement shall include assistance in connection with offences against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.

* * *

ARTICLE III
LIMITATIONS ON COMPLIANCE

(1) The Requested Party shall refuse assistance if:

(a) the request for assistance impairs the sovereignty, security or public order of the Italian Republic or, in the case of the Government of the Hong Kong Special Administrative Region, the People's Republic of China;

(b) the request for assistance would seriously impair its essential interests;

(c) the request for assistance relates to an offence of a political character;

(d) the request for assistance relates to an offence only under military law, which is not an offence under the ordinary criminal law;

(e) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of race, sex, religion, nationality or political opinions;

(2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

(a) fees of counsel retained at the request of the Requesting Party;

(b) fees of experts;

(c) expenses of translation; and

(d) travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

* * *

ARTICLE VII
LIMITATIONS OF USE

(1) After consultation with the Requesting Party, the Requested Party may require that, insofar as the law of the Requesting Party permits, information or evidence furnished be kept confidential or be disclosed or used

only subject to such terms and conditions as the Requested Party may specify.

(2) The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

* * *

APPENDIX I

European Convention on Mutual Assistance in Criminal Matters

* * *

Article 3

1 The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

* * *

APPENDIX J

CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008 REVISED Updated to 1 February 2022

* * *

74.—

* * *

(5) In the case of a request from a designated state, the Minister may not proceed in accordance with subsection (4) unless an assurance is given by the requesting authority—

(a) that any evidence that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and

(b) that the evidence will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required.

* * *

F65 Inserted (1.02.2016) by *Criminal Justice* (*Mutual Assistance*) (*Amendment*) Act 2015 (40/2015, s. 28, S.I. No. 11 of 2016.

75.—

* * *

(6) The Minister shall not proceed in accordance with subsection (5) unless an assurance is given by the requesting authority—

(a) that any material that may be furnished in response to the request will not, without his or her prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and

(b) that the material will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless he or she indicates that its return is not required.

* * *

APPENDIX K

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV-06-7663-DDP (JCx)

IN RE: SEARCH OF HARMONY GOLD, USA, INC., 7655 SUNSET BOULEVARD, LOS ANGELES, CALIFORNIA AND THE PREMISES LOCATED AT 2265 CANYONBACK ROAD, LOS ANGELES, CALIFORNIA

Filed January 26, 2007

[~~PROPOSED~~] ORDER GRANTING FRANK AGRAMA AND HARMONY GOLD, USA, INC.'S MOTION FOR RETURN OF PROPERTY

On November 15, 2006, at the request of Italian prosecutor Fabio De Pasquale under the Treaty Between the United States of America and the Italian Republic on Mutual Legal Assistance in Criminal Matters (the "MLAT"), United States law enforcement agents searched the residence of Frank Agrama and the office of Harmony Gold, USA, Inc. Italian prosecutor Fabio De Pasquale and two of his Italian forensic investigators, Stefano Martinazzo and Gabriella Chersicla, participated in the searches and helped direct the seizure of property from each location. Fabio De Pasquale, Stefano Martinazzo, and Gabriella Chersicla (together, the "Italian prosecution team") are involved in the current trial of Frank Agrama and others in Italy.

On December 1, 2007, Movants Frank Agrama and Harmony Gold, USA, Inc. filed a Motion For Return of

Property pursuant to Rule 41(g) of the Federal Rules Criminal Procedure. The Rule 41(g) Motion challenged the Italian prosecution team's unlawful and reprehensible conduct in obtaining and executing the search warrants and seizing evidence from each location that was searched. By way of the Rule 41(g) Motion, Movants requested that this Court Order the return of all property seized, that the government not retain any property seized or any copy of same, and that no item of seized property or any copy of same be transmitted to Italy.

On January 8, 2007, the government filed its Opposition to the Motion. Accompanying the Opposition was the Declaration of Fabio De Pasquale. The Declaration was not sworn under penalty of perjury. In the Declaration, Fabio De Pasquale indicated that he would not subject himself to examination in this Court.

On January 16, 2007, Movants filed an *ex parte* Application To Strike the Declaration of Fabio De Pasquale and any references to or reliance upon it in the Government's Opposition. The Application was based upon the fact that the Declaration of Fabio De Pasquale was inadmissible hearsay and Fabio De Pasquale's refusal to be cross-examined about the accuracy of his statements violated the Federal Rules of Evidence and the rules of this Court.

On January 19, 2007, in response to Movants' *ex parte* Application To Strike, the government withdrew the Declaration of Fabio De Pasquale.

After filing its Opposition, the government learned facts about the conduct of Fabio De Pasquale, Stefano Martinazzo, and Gabriella Chersicla before, during, and after the November 15, 2006 searches and seizures. Based on the information that the government learned,

on January 22, 2007 the government filed a Notice Regarding Its Response To Motion For Return of Property. The Notice brought to the Court's attention that, among other things, the government would no longer rely upon the assertions of Fabio De Pasquale. The Notice also brought to the Court's attention that, among other things, the Italian prosecution team had access to Frank Agrama's attorney-client privileged materials during its search of Harmony Gold's offices, in violation of the protocols that were established for the search and that were communicated to the Italian prosecution team before the search was conducted.

On January 23, 2007, the government filed a Notice of Withdrawal Of Its Opposition To Motion For Return of Property. In that Notice, the government informed the Court that it was withdrawing its previously-filed Opposition. The government further provided notice as follows:

> Respondent [the government] no longer objects to the relief requested in the [Rule 41(g) motion], agrees that the warrants should be withdrawn, and agrees to return all materials seized in the challenged November 15, 2006 searches to movants forthwith. No materials seized during those searches or copies thereof, will be transmitted to Italy.

NOW, THEREFORE, upon the motion of Frank Agrama and Harmony Gold, USA, Inc. and with the consent of the United States of America, based on the record in this case, including the chronology set forth above, and the evidence and legal arguments presented,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Rule 41(g) Motion for Return of Property filed by Frank Agrama and Harmony Gold, USA, Inc. is GRANTED.

2. The warrants to search the residence of Frank Agrama and the office of Harmony Gold, USA, Inc. are WITHDRAWN.

3. The United States of America shall return to Frank Agrama and Harmony Gold, USA, Inc. any and all property seized from Mr. Agrama's residence and Harmony Gold, USA, Inc.' s office and shall not retain any copy of same. The United States of America shall return such seized property FORTHWITH.

4. The United States of America shall not transmit to Italy or otherwise provide to Fabio De Pasquale or his prosecution team, or to any third party, any item of property seized from Frank Agrama's residence or from Harmony Gold, USA, Inc.'s office, or any copy of same.

DATED: January 26, 2007

[Signature]
THE HONORABLE DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE

APPENDIX L

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV-067663-DDP (JCx)

IN RE SEARCHES OF 7655 SUNSET BOULEVARD, LOS ANGELES, CALIFORNIA AND THE PREMISES LOCATED AT 2265 CANYONBACK ROAD, LOS ANGELES, CALIFORNIA

Filed January 22, 2007

GOVERNMENT'S NOTICE REGARDING ITS RESPONSE TO MOTION FOR RETURN OF PROPERTY

Respondent the United States of America hereby gives notice that its investigation has revealed facts directly relevant to its January 5, 2007, response (the "Response") to movant Frank Agrama and Harmony Gold, USA, Inc.'s, Motion for Return of Property.

In its Response, the government indicated that the searching agents followed "taint" procedures to protect movant's attorney-client and work product materials, and did not allow the Italian Prosecutor or his staff to review such materials.

The government has since learned that agents, while apparently endeavoring to follow the taint procedures, did not correctly implement those procedures. These mistakes included: (1) agents did not set aside as "tainted" correspondence that, in fact, appears to be attorney-client material; (2) agents allowed the Italian

Prosecutor's staff access to materials that, although pre-screened by agents and determined by agents to be "non-tainted," in fact contained attorney-client material; (3) agents may not have reviewed every page of the material they pre-screened and provided to the Italian Prosecutor's staff for their review; and (4) at least one agent did not follow the taint procedures listed in the affidavit, in that he understood that he was to set aside as tainted only communications between movant and certain attorneys, rather than all communications that appear to be between movant and any attorney representing him.

The government gave notice of the above facts to movants orally over the course of telephone conferences the early evening of Friday, January 19, 2007, and the afternoon on Saturday, January 20, 2007, and in a letter on Sunday, January 21, 2007. (See Attached Exhibit A). The government is continuing its investigation into these matters and anticipates filing an amended response to correct all factual inaccuracies.

The government also has withdrawn the Declaration of Fabio DePasquale (the Italian Prosecutor), as indicated in the government's January 19, 2007, filing, and therefore no longer relies upon the assertions therein to support its Response.

The government is continuing its investigation into the matters set forth above and, in consultation with the Office of International Affairs, will be evaluating the results and determining what action to take in this matter.

DATED: January 22, 2007 Respectfully submitted,

GEORGE S. CARDONA
Acting United States Attorney
THOMAS P. O'BRIEN
Assistant U.S. Attorney
Chief, Criminal Division

[Signature]
JASON P. GONZALEZ
DANIEL S. GOODMAN
Assistant United States Attorneys

Attorneys for
UNITED STATES OF AMERICA